

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE YVONNE GONZALEZ ROGERS, JUDGE

CIARA NEWTON,	)	
	)	
PLAINTIFF,	)	NO. C-17-3961 YGR
	)	
VS.	)	MONDAY, DECEMBER 17, 2018
	)	
EQUILON ENTERPRISES LLC DBA	)	OAKLAND, CALIFORNIA
SHELL OIL PRODUCTS,	)	
	)	
	)	JURY TRIAL
DEFENDANT.	)	
_____	)	

**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

**FOR PLAINTIFF:**

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EVEN R. ETHINGHOFF, ESQUIRE

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OAKLAND, CALIFORNIA 94612  
BY: EMILY A. NUGENT, ESQUIRE

**FOR DEFENDANT:**

LAFAYETTE & KUMAGAI LLP  
1300 CLAY STREET, SUITE 810  
OAKLAND, CALIFORNIA 94612  
BY: GARY T. LAFAYETTE, ESQUIRE  
BARBARA L. LYONS, ESQUIRE

**REPORTED BY:**

DIANE E. SKILLMAN, CSR 4909, RPR, FCRR  
OFFICIAL COURT REPORTER

TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

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**MONDAY, DECEMBER 17, 2018**

**8:00 A.M.**

P R O C E E D I N G S

**THE CLERK:** REMAIN SEATED. COME TO ORDER. COURT IS NOW IN SESSION. HI, DOUG. THANKS FOR FILLING IN. LET'S GO ON THE RECORD.

**MS. NUGENT:** GOOD MORNING, EMILY --

**THE COURT:** HOLD ON. DOUG, CALL THE CASE PLEASE.

**THE CLERK:** CALLING CIVIL MATTER 17-3961, NEWTON VERSUS EQUILON ENTERPRISES.

**MS. NUGENT:** EMILY NUGENT FOR THE PLAINTIFF, CIARA NEWTON, WHO IS ALSO HERE ALONG WITH SONYA SMALLETS AND EVAN ETTINGHOFF.

**MR. LAFAYETTE:** GOOD MORNING, YOUR HONOR. GARY LAFAYETTE APPEARING WITH BARBARA LYONS AND TODAY, BECAUSE MS. CHRISTINE LAYNE IS NO LONGER WITH US, SITTING WITH US AT COUNSEL TABLE WILL BE MS. CHRISTINE HILLIER. GOOD MORNING.

**THE COURT:** ALL RIGHT. ISSUES?

**MS. NUGENT:** THERE MAY BE AN ISSUE ABOUT ANOTHER PICTURE DEFENDANT HAS BROUGHT IN. I WANTED TO ALERT THE COURT THAT MS. SMALLETS WILL BE DOING THE CLOSING BUT I WOULD LIKE TO DO THE REBUTTAL PORTION.

**THE COURT:** OKAY.

**MS. NUGENT:** I HAD A QUESTION ABOUT ONE OF THE WAYS THE COURT MAY INSTRUCT THE JURY TODAY ON THE FIRST PHASE.

**THE COURT:** OKAY.

1           **MR. LAFAYETTE:** I HAVE A QUESTION, YOUR HONOR, WITH  
2 REGARD TO EXHIBIT 70, EXHIBIT 574, AND EXHIBIT 580. AND I  
3 HAVE -- I HAVE A QUESTION WITH REGARD TO THE AMOUNT OF TIME  
4 FOR CLOSINGS. I THINK I UNDERSTAND BUT I JUST WANT TO  
5 CONFIRM.

6           **THE COURT:** OKAY.

7           **MR. LAFAYETTE:** AND THERE ARE TWO PHOTOS THAT I WOULD  
8 LIKE TO SHOW TO THE JURY AND THEY ARE PHOTOS JUST OF HELMETS  
9 WITH STICKERS ON THEM. THEY ARE NOT THE STICKER THAT WE ARE  
10 TALKING ABOUT, IT IS JUST SO THE JURY WILL HAVE A VIEW OF WHAT  
11 IT LOOKS LIKE.

12           **THE COURT:** OKAY. ALL RIGHT. LET'S START WITH  
13 THE -- LET'S START WITH YOUR SET. THE PICTURE, IS IT THE SAME  
14 ISSUE?

15           **MS. NUGENT:** I THINK SO, YEAH. WE RECEIVED A COPY OF  
16 IT YESTERDAY. I DON'T KNOW WHAT IT IS, NEVER SEEN IT BEFORE,  
17 WASN'T EXCHANGED, DON'T KNOW WHOSE HELMETS THEY ARE. I ASKED  
18 MY CLIENT, SHE DOESN'T RECOGNIZE THE HELMETS EITHER.

19           **THE COURT:** CAN I HAVE THE ELMO? HOW DO YOU HAVE IT,  
20 MR. LAFAYETTE?

21           **MR. LAFAYETTE:** I HAVE ELECTRONICALLY, YOUR HONOR.  
22 LET ME SEE IF I CAN PULL IT UP REAL QUICK.

23                           (PAUSE IN THE PROCEEDINGS.)

24                           (DISPLAYED ON SCREEN.)

25           **THE COURT:** OKAY.

1           **MR. LAFAYETTE:** IT JUST APPEARED TO ME LAST WEEK WITH  
2 ALL OF THE TALK ABOUT THE HELMETS THAT I WAS REMISS IN NOT  
3 ASKING IF I COULD GET A COPY OF A HELMET, AND SO THESE I GOT  
4 OVER THE WEEKEND.

5           **THE COURT:** WHO ARE YOU EXPECTING TO COME IN?

6           **MR. LAFAYETTE:** CAMERON CURRAN, WHO IS ALREADY ON THE  
7 STAND.

8           **THE COURT:** I'M NOT GOING TO ADMIT THOSE PICTURES BUT  
9 YOU CAN HAVE HIM IDENTIFY IT AND THEN YOU CAN USE IT IN  
10 CLOSINGS. IT IS NOT A BIG DEAL. BUT I WON'T ADMIT IT. AT  
11 LEAST THAT WAY THE JURY HAS SOME CONTEXT.

12           IS THERE SOME OTHER PICTURE?

13           **MR. LAFAYETTE:** NO, THAT'S IT.

14           **THE COURT:** ANYTHING ELSE, MS. NUGENT?

15           **MS. NUGENT:** NO, I THINK THOSE ARE THE ONLY TWO.

16           **THE COURT:** OKAY. YOU HAD A QUESTION ABOUT -- SO NO  
17 QUESTION ABOUT CLOSINGS?

18           **MS. NUGENT:** I JUST WANTED TO ALERT THE COURT --  
19 THERE WAS A QUESTION ABOUT -- I KNOW YOU ARE GOING TO INSTRUCT  
20 WITH THAT FIRST -- ON THE FIRST PHASE WITH THE INSTRUCTIONS.  
21 ARE YOU GOING TO SAY ANYTHING ABOUT THE KIND OF THE  
22 STEP-BY-STEP PROCESS, DELIBERATIVE PROCESS?

23           **THE COURT:** NO.

24           **MS. NUGENT:** OKAY. WE WEREN'T PLANNING -- I KNOW WE  
25 CAN DISCUSS DAMAGES, BUT WE WEREN'T PLANNING ON IT. SO I

1 DIDN'T KNOW IF THAT WAS SOMETHING THE JURY WAS GOING TO KNOW.

2 OKAY.

3 **THE COURT:** SO, JURORS EXPECT, RIGHT -- I MEAN WE  
4 TELL THEM UPFRONT, WE ASK THEM QUESTIONS, THEY EXPECT TO HEAR  
5 ABOUT DAMAGES. SO I THINK -- IS YOUR PLAN TO ARGUE DAMAGES IN  
6 THE FIRST INSTANCE?

7 **MS. NUGENT:** NO.

8 **MS. SMALLETS:** NO, YOUR HONOR.

9 **THE COURT:** YOU'RE NOT?

10 ARE YOU?

11 **MR. LAFAYETTE:** NO, YOUR HONOR.

12 **THE COURT:** OKAY. SO, YOU KNOW, WE'LL JUST DO IT --  
13 YEAH, I WASN'T GOING TO TELL THEM TO COME BACK.

14 THE LAST TIME I DID THIS, YOU KNOW, ONE OF THE JURORS HAD  
15 SAID, WELL, IF WE HAD FOUND IN FAVOR OF THE PLAINTIFF, WE  
16 STILL HAD TO DO DAMAGES, RIGHT? I SAID, YES, RIGHT. SO THEY  
17 ARE SMART. THEY UNDERSTAND WHAT'S GOING ON.

18 OKAY. SO I THINK WE'VE TAKEN CARE OF ALL OF YOURS?

19 **MS. NUGENT:** YES, YOUR HONOR.

20 **THE COURT:** OKAY.

21 WE TOOK CARE OF THE PHOTOS. WHAT IS THE ISSUE WITH THE  
22 CLOSINGS?

23 **MR. LAFAYETTE:** I UNDERSTAND WE EACH HAVE AN HOUR OF  
24 CLOSING --

25 **THE COURT:** SO WHAT YOU HAVE IS, I'VE RESERVED AN

1        HOUR FOR YOU.  AND THAT TAKES YOU THROUGH -- WELL, IT IS AN  
2        HOUR PLUS ANY OTHER TIME YOU HAVE.  PLAINTIFFS DON'T HAVE VERY  
3        MUCH TIME LEFT, SO THEY CAN'T ADD MUCH MORE ON THERE.  YOU  
4        HAVE -- I DON'T KNOW HOW MUCH OF YOUR TIME YOU ARE GOING TO  
5        USE.

6                **MR. LAFAYETTE:**  NOT A LOT.

7                **THE COURT:**  EXCUSE ME?

8                **MR. LAFAYETTE:**  NOT A LOT THIS MORNING.

9                **THE COURT:**  THEN YOU HAVE EXTRA TIME.

10               **MR. LAFAYETTE:**  THANK YOU.

11               **THE COURT:**  SO IT'S YOUR TIME.  YOU EITHER USE IN THE  
12        EVIDENTIARY PORTION, YOU CAN ADD IT TO THE CLOSINGS.  YOU  
13        KNOW, AT A CERTAIN POINT THEY DON'T WANT TO HEAR FROM YOU ANY  
14        MORE, SO IT IS UP TO YOU.

15               **MR. LAFAYETTE:**  I KNOW THAT FEELING.

16               **THE COURT:**  DOES THAT ANSWER YOUR QUESTION?

17               **MR. LAFAYETTE:**  YES, YOUR HONOR.

18               **THE COURT:**  OKAY.  SO THEN YOU WANTED TO TALK ABOUT  
19        EXHIBITS.

20               **MR. LAFAYETTE:**  YES.  EXHIBIT 70 --

21               **THE COURT:**  HOLD ON -- I DON'T KNOW WHAT THE PROBLEM  
22        IS HERE.

23                                (PAUSE IN THE PROCEEDINGS.)

24               **THE COURT:**  EXHIBIT....

25               **MR. LAFAYETTE:**  70.



1           **THE COURT:** 70, WHICH IS WHAT?

2           **MR. LAFAYETTE:** IT WAS EXHIBIT 70 AND THEN IT GOT  
3 BROKEN UP INTO EXHIBIT 70A.

4           **THE COURT:** REMIND ME WHICH 70 IS.

5           **MR. LAFAYETTE:** IT'S -- THE CBA.

6           **MS. NUGENT:** IT'S THE PERSONNEL FILE.

7           **MR. LAFAYETTE:** NO. IT'S THE PERSONNEL FILE.

8           **THE COURT:** OH, RIGHT. SO WE TOOK OUT THE FIRST TWO  
9 PAGES WITH THE COVER LETTER THAT RELATED TO THE UNION OR THE  
10 GRIEVANCE OR SOMETHING LIKE THAT. SO 70A IS JUST ALL OF 70  
11 EXCEPT FOR THE FIRST TWO PAGES.

12           **MS. NUGENT:** THAT'S RIGHT.

13           **MR. LAFAYETTE:** I JUST WANT TO MAKE SURE, YOUR HONOR,  
14 THAT 318 AND 319 -- BATES STAMP 318 AND 319 ARE IN 70 AS IT IS  
15 HERE.

16           **THE COURT:** WELL, LET'S... WE WOULD HAVE TO CHECK.  
17 CAN YOU PULL NO. 70 AND LET ME SEE 70?

18           **THE CLERK:** PLAINTIFF'S 70, YOUR HONOR?

19           **MR. LAFAYETTE:** YES.

20           **THE COURT:** I WANT TO SEE THE COURT'S COPY. YOU ARE  
21 ASKING ABOUT PAGES --

22           **MR. LAFAYETTE:** 318 AND 319.

23           **THE COURT:** YES. THEY SHOULD BE AND I'M  
24 CONFIRMING... YES, THEY ARE, 318 AND 319 ARE PART OF  
25 EXHIBIT 70A.

1           **MR. LAFAYETTE:** AND THEN THERE WAS EXHIBIT 574, YOUR  
2 HONOR.

3           **THE COURT:** AND 574 FROM PEREZ?

4           **MR. LAFAYETTE:** I THINK THAT'S CORRECT. I SHOW IT AS  
5 ADMITTED.

6           **THE COURT:** I SHOW IT AS ADMITTED.

7           **MR. LAFAYETTE:** AND 580.

8           **THE COURT:** 580 --

9           **MR. LAFAYETTE:** OH, I THINK IT IS ADMITTED AS A  
10 DEFENSE -- AS A PLAINTIFF EXHIBIT.

11           **THE COURT:** I SHOW 580 IS NOT ADMITTED. THIS WAS  
12 RAISED WITH METCALF. IT WAS IDENTIFIED BUT I DON'T SHOW THAT  
13 IT WAS ADMITTED.

14           **MR. LAFAYETTE:** THEN I WOULD LIKE TO MOVE IT INTO  
15 EVIDENCE, YOUR HONOR.

16           **THE COURT:** OKAY. I HAVE TO SEE IT. IS THERE ANY  
17 OBJECTION?

18           **MS. NUGENT:** THERE'S NO OBJECTION. I -- THERE IS NO  
19 OBJECTION. THERE IS ANOTHER COPY OF IT THAT IS ADMITTED,  
20 PLAINTIFF'S VERSION BUT NO OBJECTION.

21           **THE COURT:** SO 580 IS ADMITTED.

22 (DEFENDANT'S EXHIBIT 580 RECEIVED IN EVIDENCE)

23           **MR. LAFAYETTE:** THAT'S ALL I HAD TODAY, YOUR HONOR.

24           **THE COURT:** OKAY. OVER THE WEEKEND I SENT YOU THE  
25 INSTRUCTIONS AND VERDICT FORMS FOR APPELLATE PURPOSES. TO THE

1 EXTENT THAT YOU'VE MADE OBJECTIONS, THOSE ARE NOTED FOR THE  
2 RECORD.

3 ARE THERE ANY OTHER LAST MINUTE COMMENTS THAT YOU WANT TO  
4 MAKE? IF NOT, WE WILL TAKE THE DRAFT OFF AND START GETTING  
5 THE BINDERS READY FOR THE JURORS.

6 **MR. LAFAYETTE:** NO, YOUR HONOR.

7 **MS. SMALLETS:** NO, YOUR HONOR.

8 **THE COURT:** OKAY. SO THAT YOU KNOW WHAT THEY WILL  
9 HAVE, THEY WILL HAVE THE WRITTEN COPIES OF THE -- OF PHASE ONE  
10 INSTRUCTIONS. IT WILL SAY COPY ON IT. THEY WILL ALSO GET IN  
11 THEIR BINDERS ONE AT A TIME, THEY WILL GET -- AT LEAST THE  
12 FIRST VERDICT FORM. IT WILL BE BLUE. SO THAT THERE IS  
13 ABSOLUTELY NO CONFUSION ABOUT WHAT -- SO THERE WILL BE ONE  
14 ORIGINAL VERDICT AND EACH OF THEIR BINDERS WILL HAVE A BLUE  
15 COPY JUST TO HELP THEM KEEP TRACK OF THINGS. JUST SO THAT YOU  
16 KNOW, IN CASE YOU ARE NOT CONFUSED ABOUT WHAT IS IN THEIR  
17 BINDERS. OKAY?

18 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

19 **THE COURT:** WE WILL STAND IN RECESS UNTIL THE JURY  
20 GETS HERE AND THEN WE WILL -- MR. LAFAYETTE, TELL ME WHO WE  
21 HAVE TODAY PLEASE.

22 **MR. LAFAYETTE:** WE HAVE MR. CURRAN WHO IS ON THE  
23 STAND, WE HAVE DEANNA MARTINEZ, AND MIKE BECK.

24 **THE COURT:** SO RIZZO WILL NOT BE COMING.

25 **MR. LAFAYETTE:** RIZZO WILL NOT BE COMING.

1           **THE COURT:** IS BECK GOING TO TELL ME WHAT THE  
2 CORPORATE FORM IS OF EQUILON?

3           **MR. LAFAYETTE:** THIS IS WHAT I CAN TELL YOUR HONOR.  
4 THE CORPORATE FORM OF EQUILON IS AN LLC --

5           **THE COURT:** DOES THAT STAND FOR A LIMITED LIABILITY  
6 CORPORATION?

7           **MR. LAFAYETTE:** YES.

8           **THE COURT:** LIMITED LIABILITY COMPANY? WHAT?

9           **MR. LAFAYETTE:** CORPORATION.

10          **MS. LYONS:** COMPANY.

11          **MR. LAFAYETTE:** COMPANY? WHY DON'T YOU STAND UP. DO  
12 YOU HAVE THE DOCUMENT?

13          **MS. LYONS:** WE HAVE A COUPLE OF THEM, YOUR HONOR.  
14 EQUILON ENTERPRISES, LLC, IS A DELAWARE LIMITED LIABILITY  
15 COMPANY ADMITTED TO CONDUCT INTRASTATE BUSINESS IN THE STATE  
16 OF CALIFORNIA AND REGISTERED WITH THE CALIFORNIA SECRETARY OF  
17 STATE AS SUCH.

18          **MR. LAFAYETTE:** IT HAS... BASED UPON THE FILINGS WITH  
19 THE SECRETARY OF STATE --

20          **THE COURT:** CAN YOU SPEAK INTO THE MIC.

21          **MR. LAFAYETTE:** BASED UPON THE FILINGS WITH THE  
22 SECRETARY OF STATE, IT HAS ONE -- I TAKE THAT BACK, TWO  
23 MEMBERS, SOPC HOLDINGS WEST AND TMR COMPANY. THERE ARE NO  
24 MANAGERS. AND THAT'S ALL THERE IS. I HAVE NOTHING FURTHER  
25 THAN THAT, YOUR HONOR.

1           **THE COURT:** WELL, WHO IS RESPONSIBLE FOR IT? WHO ARE  
2 THE OFFICERS AND DIRECTORS?

3           **MR. LAFAYETTE:** ALL I HAVE IS THAT IT IS -- IT'S  
4 LOCATED IN HOUSTON, TEXAS. IT IS SOPC, WHICH I BELIEVE STANDS  
5 FOR SHELL OIL PETROLEUM COMPANY HOLDINGS WEST. THAT'S ALL  
6 I'VE GOT.

7           **THE COURT:** WELL, BECK BETTER MAKE A PHONE CALL AND  
8 FIGURE IT OUT. I MEAN, SOMEONE SHOULD KNOW THE ANSWER TO THIS  
9 QUESTION IF YOUR ARGUMENT IS THAT YOU ARE NOT SHELL OIL  
10 PRODUCTS.

11          **MR. LAFAYETTE:** I THINK THE ISSUE THAT WE -- I MAY BE  
12 MISTAKEN, BUT I THINK THIS RAISES TO THE LEVEL OF PUNITIVE  
13 DAMAGES IN THE INSTRUCTIONS THERE. THAT'S THE WAY I HAVE  
14 ALWAYS SORT OF LOOKED AT THIS.

15          AND PLAINTIFF HAD THE BURDEN OF PRODUCING CLEAR AND  
16 CONVINCING EVIDENCE THAT AN OFFICER AND DIRECTOR DID CERTAIN  
17 THINGS. PLAINTIFF HASN'T DONE THAT AND THAT'S THE PROBLEM  
18 THAT WE HAVE. PLAINTIFF SHOULD HAVE PRESENTED THE EVIDENCE OF  
19 THE CORPORATE STRUCTURE. PLAINTIFF SHOULD HAVE PRESENTED  
20 EVIDENCE IDENTIFYING A MANAGING AGENT OR AN OFFICER, DIRECTOR  
21 OR SOMETHING, AND PLAINTIFF HASN'T.

22          AND MORE IMPORTANTLY, THEY HAVEN'T SHOWN THAT THERE IS  
23 SOMEONE IN ONE OF THOSE POSITIONS THAT ACTUALLY DID SOMETHING  
24 OR ACTUALLY RATIFIED SOMETHING. THAT'S PLAINTIFF'S BURDEN.

25          AND PLAINTIFF DIDN'T CONDUCT DISCOVERY THERE AND THEY HAVE

1 NOT MADE ANY SHOWING HERE. THAT'S THE CONCERN THAT I HAVE.  
2 IT IS ACTUALLY PUTTING ME IN A POSITION WHERE I AM FORCED TO  
3 MAKE THAT CASE.

4 **THE COURT:** YOU YELLED AND SCREAMED ABOUT IT AND I  
5 WOULD EXPECT IF YOU ARE GOING TO GO YELL AND SCREAM ABOUT  
6 SOMETHING, YOU WOULD KNOW WHAT THE ANSWER IS.

7 **MR. LAFAYETTE:** THE ONLY THING THAT I ACTUALLY KNOW  
8 IS WHAT I'M TELLING YOU. IT IS EQUILON DOING BUSINESS AS  
9 SHELL OIL WHATEVER IT SAYS. AND WITH REGARD TO THE CORPORATE  
10 STRUCTURE OF EQUILON, I HAVE NOW STATED WHAT I KNOW BUT  
11 PLAINTIFF STILL HASN'T PRESENTED ANY EVIDENCE HERE.

12 **THE COURT:** ALL RIGHT. RESPONSE.

13 **MS. SMALLETS:** WE ARE NOT ARGUING THAT AN OFFICER OR  
14 DIRECTOR OF EQUILON WAS INVOLVED IN OR RATIFIED THE DECISION.  
15 WE ARE RELYING ON THE MANAGING AGENT PRONG.

16 **THE COURT:** OKAY.

17 **MS. SMALLETS:** AND FOR MANAGING AGENT, IT DOES NOT  
18 ACTUALLY NEED TO BE A MANAGING AGENT OF THE ENTIRE  
19 CORPORATION. IT NEEDS TO BE A MANAGING AGENT OF A DEFINABLE  
20 UNIT OF THE CORPORATION.

21 THERE IS CASE LAW THAT SAID -- THERE IS -- AND I CAN FIND  
22 THE CASE CITE, BUT THERE IS CASE LAW THAT FOUND A REGIONAL  
23 MANAGER OF A FEW DOZEN SMALL RETAIL STORES WAS A MANAGING  
24 AGENT WITH RESPECT TO THAT PORTION OF THE COMPANY.

25 SO, WE -- SO MIKE BECK, THE EVIDENCE SHOWS HE WAS THE ONE

1 THAT WAS RUNNING THE DEPARTMENT IN WHICH HE MADE THE DECISION.  
2 HE HAD THE AUTHORITY TO MAKE THE DECISION. THE BUCK STOPPED  
3 WITH HIM. HE IS SETTING AUTHORITY FOR THAT DEPARTMENT. WE  
4 ARE OBVIOUSLY ANTICIPATING MR. LAFAYETTE TO BRING TOM RIZZO  
5 AND WOULD HAVE INQUIRED OF HIM AS WELL.

6 **THE COURT:** SO YOU WILL SEE THAT ON THE INSTRUCTIONS  
7 THAT I PROVIDED TO YOU, THERE WAS A BRACKET AND I WILL NEED  
8 ARGUMENT, WE HAVE TIME ONCE I SEND THIS TO THE JURY, AS TO  
9 WHAT THE PLAINTIFF BELIEVED SHOULD BE IN THE BRACKET.

10 WHAT I'VE PUT IN THERE -- AND THIS IS ON THE PUNITIVES  
11 ISSUE. WHAT I PUT IN THERE IS WHAT I'VE HEARD YOU ARGUE WHEN  
12 I'VE ASKED THE QUESTION BEFORE, BUT I AM GOING TO NEED  
13 CONFIRMATION.

14 AND THEN I HAVE TO UNDERSTAND, AS I MENTIONED TO YOU ON  
15 FRIDAY, WHAT EVIDENCE YOU BELIEVE EXISTS WITH RESPECT TO THE  
16 KNOWLEDGE OF EACH OF THOSE INDIVIDUALS REGARDING THE  
17 UNDERLYING CONDUCT AT ISSUE, BECAUSE I DO HAVE CONCERNS THAT  
18 NOT ALL OF THOSE PEOPLE WOULD QUALIFY.

19 ALL RIGHT.

20 **MS. SMALLETS:** THANK YOU, YOUR HONOR.

21 **MR. LAFAYETTE:** THANK YOU.

22 **THE COURT:** WE WILL STAND IN RECESS.

23 (RECESS TAKEN AT 8:19 A.M.; AND RESUMED AT 8:28 A.M.)

24 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

25 **THE COURT:** GOOD MORNING, EVERYONE. YOU CAN BE

1 SEATED. THE RECORD WILL REFLECT THE JURY IS HERE. YOU CAN BE  
2 SEATED.

3 GOOD WEEKEND? LITTLE WET YESTERDAY. I DON'T KNOW WHAT IT  
4 IS. IT DOESN'T RAIN ALL WEEKEND AND WHEN MY DAUGHTER AND I  
5 WENT IN TO SEE THE NUTCRACKER, IT WAS POURING RAIN. IT HAS  
6 HAPPENED LIKE THE LAST FOUR YEARS. I DON'T KNOW, IT'S LIKE WE  
7 ARE GOING TO THE NUTCRACKER, SO IT MUST RAIN BY DEFINITION.

8 BUT IN ANY EVENT, IT WAS GREAT. IF YOU HAVEN'T SEEN A  
9 LOCAL VERSION, YOU SHOULD GO SEE A LOCAL VERSION. THEY'RE  
10 ALWAYS -- YOU KNOW, SHUTTERFLY WILL SEND YOU PICTURES FROM  
11 LIKE A DECADE BEFORE. I ACTUALLY WORRY ABOUT THE FACT THAT  
12 THEY'RE TRACKING ALL MY PICTURES, BUT IN ANY EVENT, THEY DID.  
13 AND I HAD A PICTURE OF HER FROM WHEN SHE WAS IN THE  
14 NUTCRACKER, LIKE JUST ARRIVED, TEN YEARS BEFORE AND THERE WE  
15 WERE WATCHING IT. IT WAS REALLY FUN.

16 ANYHOW, A LOT OF WORK TO DO TODAY, BUT IT SHOULD BE A GOOD  
17 PRODUCTIVE DAY. WE WILL CONTINUE WITH MR. CURRAN. I DIDN'T  
18 SAY THAT RIGHT.

19 BUT I WILL REMIND YOU, YOU ARE STILL UNDER OATH.

20 OKAY, MR. LAFAYETTE.

21 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

22 **THE COURT:** YOU MAY PROCEED.

23 **DIRECT EXAMINATION RESUMED**

24 **BY MR. LAFAYETTE:**

25 **Q.** GOOD MORNING.



1       **A.**   GOOD MORNING.

2       **Q.**   HOW ARE YOU?

3       **A.**   GOOD, THANK YOU.   HOW ARE YOU?

4       **Q.**   GOOD.   THANK YOU.

5           LET'S PICK UP WITH A COUPLE OF THINGS.   DO YOU HAVE THE  
6   WITNESS BINDER IN FRONT OF YOU, A BLACK ONE?

7       **A.**   I DO NOT.

8                               (BINDER HANDED TO WITNESS.)

9       **Q.**   I WOULD LIKE FOR YOU TO TAKE A LOOK AT TAB 541,  
10   EXHIBIT 541.

11           DO YOU HAVE IT THERE?

12       **A.**   YES.

13       **Q.**   DO YOU RECOGNIZE THAT DOCUMENT?

14       **A.**   YES.

15       **Q.**   WHAT IS IT?

16       **A.**   IT LOOKS LIKE THE PD LOG FOR THE BAKER TANK INCIDENT WHEN  
17   THE VALVE WAS OPENED UP.

18       **Q.**   IS IT AN EMAIL?

19       **A.**   YES.

20               **MR. LAFAYETTE:**   YOUR HONOR, I WOULD LIKE TO MOVE THIS  
21   DOCUMENT INTO EVIDENCE.

22               **THE COURT:**   ANY OBJECTION?

23               **MS. SMALLETS:**   NO, YOUR HONOR.

24               **THE COURT:**   ADMITTED.

25

1 (DEFENDANT'S EXHIBIT 541 RECEIVED IN EVIDENCE)

2 (DISPLAYED ON SCREEN.)

3 **THE COURT:** SO YOU NEED TO -- HE'S CONNECTED -- IT'S  
4 NOT THE ELMO. THE PLAINTIFF'S (SIC) COMPUTER OR WHATEVER.

5 **MR. LAFAYETTE:** MY IPAD.

6 (PAUSE IN THE PROCEEDINGS.)

7 **THE COURT:** IS IT CONNECTING OR NOT?

8 **THE CLERK:** NO, IT IS NOT CONNECTING, JUDGE. I TRIED  
9 SEVERAL SETTINGS HERE.

10 **THE COURT:** CAN WE PUT IT THE ON THE ELMO FOR NOW?

11 **MR. LAFAYETTE:** CAN YOU GIVE ME A HARD COPY SET OF  
12 541?

13 **THE COURT:** HERE YOU GO, MR. LAFAYETTE.

14 **THE CLERK:** WE GOT IT.

15 **MR. LAFAYETTE:** THANK YOU.

16 **BY MR. LAFAYETTE:**

17 **Q.** ALL RIGHT. DO YOU HAVE EXHIBIT 541 IN FRONT OF YOU THERE?  
18 NOW, TELL ME WHAT WE ARE LOOKING AT HERE. IS THIS AN  
19 EMAIL FROM YOU TO YOURSELF?

20 **A.** YES. THIS IS A DIFFERENT EXHIBIT THAN ON THE SCREEN.

21 **Q.** THIS IS THE ONE. DO YOU HAVE 541?

22 **THE COURT:** IT JUST WENT OFF. DID YOU --

23 **MR. LAFAYETTE:** IT'S ME. THAT WAS ME.

24 **THE WITNESS:** YES, THERE IT IS.  
25

1 **BY MR. LAFAYETTE:**

2 **Q.** IS THIS AN EMAIL FROM YOU TO YOURSELF?

3 **A.** YES.

4 **Q.** WHY DID YOU DO THAT?

5 **A.** I CAN'T REMEMBER IF THIS HAD TO DO WITH WHETHER I WAS  
6 WRITING A MICROSOFT WORD PROGRAM AND I WANTED TO SAVE IT.

7 **Q.** AND WHAT DOES THIS RELATE TO?

8 **A.** OPENING UP THE WRONG VALVE ON THE BAKER TANK.

9 **Q.** COULDN'T HEAR YOU.

10 **A.** OPENING UP THE WRONG VALVE ON THE BAKER TANK.

11 **Q.** THIS IS THE BAKER TANK INCIDENT?

12 **A.** YES.

13 **Q.** ALL RIGHT. NOW AFTER THAT -- TAKE A LOOK AT EXHIBIT 542.  
14 IS THIS AN EMAIL STRING BETWEEN YOU AND MR. PEREZ?

15 **A.** YES.

16 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT  
17 INTO EVIDENCE, YOUR HONOR.

18 **THE COURT:** ANY OBJECTION?

19 **MS. SMALLETS:** NO, YOUR HONOR.

20 **THE COURT:** IT IS ADMITTED.

21 (DEFENDANT'S EXHIBIT 542 RECEIVED IN EVIDENCE)

22 **BY MR. LAFAYETTE:**

23 **Q.** NOW THE BOTTOM EMAIL MR. PEREZ WRITES:

24 CAMERON, WHEN YOU DO CIARA'S NEXT BE PMP, SHE WILL NEED TO  
25 HAVE SOME HONEST FEEDBACK.

1           WHAT IS A PMP?

2       **A.**   IT'S THE PERFORMANCE REVIEW.

3       **Q.**   AND HAD YOU SPOKEN TO MR. PEREZ ABOUT THE BAKER TANK ISSUE  
4       BEFORE YOU RECEIVED THIS EMAIL FROM HIM?

5       **A.**   YES.

6       **Q.**   ALL RIGHT.  NOW I WOULD LIKE FOR YOU TO LOOK AT  
7       EXHIBIT 5 -- I WOULD LIKE TO MOVE THAT -- 543.  DO YOU SEE  
8       THAT EMAIL?

9       **A.**   YES.

10      **Q.**   IS THIS ANOTHER EMAIL FROM YOU TO YOURSELF?

11      **A.**   YES.

12      **Q.**   DATED JUNE 18, 2016?

13      **A.**   YES.

14               **MR. LAFAYETTE:**  I WOULD LIKE TO MOVE THIS DOCUMENT  
15       INTO EVIDENCE, YOUR HONOR.

16               **THE COURT:**  ANY OBJECTION?

17               **MS. SMALLETS:**  NO, YOUR HONOR.  BUT IT IS DATED  
18       JULY 18TH, 2016?

19               **MR. LAFAYETTE:**  JULY 18TH.

20               **THE COURT:**  ADMITTED.  NOTED.

21               (DEFENDANT'S EXHIBIT 543 RECEIVED IN EVIDENCE)

22       **BY MR. LAFAYETTE:**

23       **Q.**   AND WHAT DOES THIS RELATE TO?

24       **A.**   IT RELATES TO CIARA HAD TAKEN TWO DAYS OFF PRIOR TO THIS.  
25       SHE DIDN'T HAVE EXTRA VACATION, SO SHE MADE A DEAL WITH ERIC

1 PEREZ TO TAKE TWO DAYS OFF BUT TO PAY HERSELF BACK. SOME TIME  
2 HAS PAST. I BELIEVE THAT WAS IN MAY. AND ERIC ASKED ME TO  
3 HAVE HER COME TO WORK TO PAY THOSE TWO DAYS BACK. AND SO ON A  
4 THURSDAY BEFORE WE LEFT, ME AND CIARA SAT DOWN AND PICKED TWO  
5 DAYS AND PUT IT ON THE SCHEDULE. AND THEN WHEN WE CAME BACK  
6 FROM OUR WEEK OFF, I ASKED HER HOW IT WENT AND SHE LOOKED AT  
7 ME, LIKE SHE DIDN'T KNOW WHAT I WAS TALKING ABOUT. I SAID THE  
8 TWO DAYS YOU WERE SUPPOSED TO WORK.

9 AND THEN I TOOK HER INTO THE OFFICE TO HAVE A CONVERSATION  
10 WITH HER TO FIND OUT WHAT HAPPENED. WHEN WE WERE SITTING  
11 THERE, SHE LOOKED AT ME, KIND OF COCKED HER HEAD TO THE SIDE,  
12 AND SAID, DID YOU EMAIL ME? DO YOU HAVE PROOF THAT YOU SIGNED  
13 ME UP FOR THESE DAYS? I WAS FLABBERGASTED. I COULDN'T  
14 BELIEVE IT SO....

15 **Q.** WHY WERE ARE YOU FLABBERGASTED?

16 **A.** WE SAT THERE TOGETHER AND PICKED TWO DAYS AND THEN SHE'S  
17 ALMOST SAYING I'M A LIAR.

18 WE NEVER EMAIL OPERATORS OR DO ANY KIND OF SIGNING OF  
19 PEOPLE. WHEN PEOPLE SIGN UP FOR DAYS, THEY COME IN. THERE IS  
20 NEVER ANY QUESTION OF INTEGRITY THERE. SO... IT WAS SHOCKING  
21 TO ME.

22 **Q.** ALL RIGHT. HAD ANYONE EVER DONE THAT TO YOU BEFORE?

23 **A.** NEVER.

24 **Q.** OKAY. AND SO DID YOU WORK OUT A PLAN WITH HER ON HOW SHE  
25 WOULD MAKE UP THE TIME?

1       **A.**    YES.

2       **Q.**    WHAT WAS NEXT AGREED TO?

3       **A.**    I CAN'T REMEMBER.  BUT SHE CAME IN FOR THE SHIFT, THAT SHE  
4       NEEDED TO COME IN FOR.

5       **Q.**    DID YOU DID SHE EVER MAKE UP ALL THE TIME?

6       **A.**    I'M NOT SURE.  I DON'T KNOW.

7       **Q.**    OKAY.  TAKE A LOOK IF YOU CAN EXHIBIT 547.  DO YOU  
8       RECOGNIZE EXHIBIT 547?

9       **A.**    YES.

10               **MR. LAFAYETTE:**  I THINK THIS DOCUMENT IS IN EVIDENCE,  
11       YOUR HONOR.

12               **THE COURT:**  547 IS IN EVIDENCE.

13               **MR. LAFAYETTE:**  IS?

14               **THE COURT:**  IT IS.

15               **MR. LAFAYETTE:**  THANK YOU, YOUR HONOR.

16                               (DISPLAYED ON SCREEN.)

17       **BY MR. LAFAYETTE:**

18       **Q.**    NOW THIS IS AN EMAIL YOU RECEIVED FROM ERIC PEREZ?

19       **A.**    YES.

20       **Q.**    DID YOU ASK MR. PEREZ TO WRITE THIS EMAIL TO YOU?

21       **A.**    NO.

22       **Q.**    DID YOU UNDERSTAND WHAT HE WAS ASKING YOU TO DO?

23       **A.**    YES.

24       **Q.**    AND WHAT WAS THAT?

25       **A.**    TO HAVE A INTERVIEW WITH CIARA.

1 Q. AND DID YOU ARRANGE FOR SUCH AN INTERVIEW?

2 A. YES, I DID.

3 Q. AND WITH WHOM DID YOU ARRANGE THAT INTERVIEW?

4 A. CIARA, GUY ROZAR, MYSELF, AND NICK BACKENS.

5 Q. WHY NICK BACKENS?

6 A. HE IS THE UNION STEWARD.

7 Q. OKAY. NOW WHAT WAS YOUR GOAL IN HAVING THIS MEETING WITH  
8 MR. BACK -- WITH THESE PEOPLE?

9 A. TO GET TO THE BOTTOM OF WHAT IS GOING ON, TO UNDERSTAND  
10 WHAT IS HAPPENING.

11 Q. OKAY. SO, AND WHEN -- DID YOU HAVE THE MEETING?

12 A. YES.

13 Q. WHEN DID THE MEETING TAKE PLACE?

14 A. I BELIEVE IT WAS THE FRIDAY FOLLOWING THIS EMAIL.

15 Q. OKAY. NOW THE DAY OF THAT MEETING, WAS THAT THE 22ND OF  
16 JULY?

17 A. YES.

18 Q. NOW THE DAY OF THAT MEETING, WERE YOU THERE FOR THE  
19 MEETING AT 6:00 O'CLOCK?

20 A. I WAS AT WORK AT 6:00.

21 Q. WAS MS. NEWTON THERE AT 6:00?

22 A. NO.

23 Q. DO YOU HAVE APPROXIMATION AS TO WHAT TIME SHE SHOWED UP?

24 A. I THINK MAYBE 6:20, 6:30. SOMETIME AROUND THEN.

25 Q. PRIOR TO THAT HAD SHE CONTACTED YOU?





25           **A.**   YES.

1 Q. NOW, DID YOU GET AN UNDERSTANDING FROM HER AS TO WHAT HAD  
2 HAPPENED THAT DAY?

3 A. WE'RE TALKING ABOUT THE BAKER TANK?

4 Q. THE BAKER TANK, YES.

5 A. YES.

6 Q. WHAT DID SHE SAY?

7 A. IT WAS DARK, SHE WAS TIRED, AND SHE OPENED THE WRONG  
8 VALVE.

9 Q. DID SHE SAY ANYTHING ELSE?

10 A. I DON'T REMEMBER.

11 Q. OKAY. DID YOU DISCUSS THE ATTENDANCE ISSUE RELATING TO  
12 HER MAKING UP THE SHIFT SWAP?

13 A. IN THAT MEETING I -- I DON'T RECALL WITHOUT LOOKING AT MY  
14 NOTES IF WE DISCUSSED IT.

15 Q. ALL RIGHT. YOU HAD SOME HANDWRITTEN NOTES?

16 A. YES.

17 Q. I WOULD LIKE FOR YOU TO TAKE A LOOK AT EXHIBIT 550. DO  
18 YOU RECOGNIZE EXHIBIT 550?

19 A. YES, I DO.

20 Q. WHAT ARE THOSE?

21 A. THESE ARE MY HANDWRITTEN NOTES FROM THAT MEETING.

22 Q. ALL RIGHT. IF YOU NEED TO TAKE A LOOK IF YOU ARE  
23 UNCERTAIN OR IF YOU NEED TO REFRESH RECOLLECTION, OKAY?

24 MS. SMALLETS: OBJECTION, YOUR HONOR.

25 THE COURT: SUSTAINED.

1           WHAT I WOULD LIKE YOU TO DO IS YOU CAN TURN THOSE OVER. I  
2       NEED TO KNOW WHETHER YOU ARE TESTIFYING FROM MEMORY OR WHETHER  
3       YOUR MEMORY IS BEING REFRESHED. YOU CAN REFRESH IT. YOU JUST  
4       NEED TO LET US KNOW.

5           **THE WITNESS:** I WOULD LIKE TO REFRESH MY MEMORY.

6           **MS. SMALLETS:** OBJECTION, YOUR HONOR.

7           **THE COURT:** THERE IS NO QUESTION PENDING, SO THERE IS  
8       NOTHING TO REFRESH YET.

9           **THE WITNESS:** OKAY.

10          **BY MR. LAFAYETTE:**

11          **Q.** SO NOW YOU SAID YOU SPOKE ABOUT THE GASTEC TUBE. IS THAT  
12       THE SAME AS THE DRAEGER TUBE?

13          **A.** YES.

14          **Q.** TELL ME WHAT YOU REMEMBER THAT NIGHT. WERE YOU THERE THAT  
15       NIGHT?

16          **A.** YES.

17          **Q.** DID YOU WITNESS WHAT HAPPENED?

18          **A.** I DIDN'T WITNESS HER TAKING A SAMPLE.

19               I WAS THERE.

20          **Q.** TELL ME WHAT HAPPENED.

21          **A.** THERE WAS NO -- THERE WAS NO USED SAMPLE TUBES OUT THERE.  
22       THERE'S TWO BRAND NEW, UNOPENED BOXES AND NO USED TUBES.  
23       THERE IS NO EVIDENCE OF THE SAMPLE ACTUALLY BEING TAKEN FOR  
24       SEVERAL DAYS.

25          **Q.** WHERE WERE THE TWO UNOPENED BOXES?

1     **A.**   SITTING ON TOP OF THE SAMPLE STATION.  IT'S LIKE A  
2     STAINLESS STEEL BOX.

3     **Q.**   WHO PUT THEM THERE?

4     **A.**   MYSELF.

5     **Q.**   AND HOW MANY TUBES ARE THERE IN EACH ONE OF THESE BOXES?

6     **A.**   20 TUBES, I BELIEVE.

7     **Q.**   SO A TOTAL OF 40 TUBES THERE?

8     **A.**   40 TUBES, YEAH.

9     **Q.**   OKAY.  AND SO DID YOU APPROACH HER WHILE SHE WAS THERE?

10    **A.**   I BELIEVE I ASKED HER TO COME OUTSIDE.

11    **Q.**   TO COME OUTSIDE?

12    **A.**   YES.

13    **Q.**   AND THEN WHAT HAPPENED?

14    **A.**   WE HAD A CONVERSATION.  I ASKED HER HOW SHE WAS GETTING  
15    HER SAMPLE RESULTS AND IF SHE'S BEEN DOING IT.  AND SHE SAID  
16    SHE FOUND A TUBE ON THE GROUND AND USED IT.  AND LOOKED AROUND  
17    AND COULDN'T FIND THE USED TUBE.

18           AND THEN WE HAD A CONVERSATION AS TO WHY WE PULL THAT  
19    SAMPLE, WHY IT IS IMPORTANT.  I ASKED HER IF SHE KNEW WHY AND  
20    SHE DIDN'T, SO WE HAD A CONVERSATION ABOUT WHY WE PULL THAT  
21    SAMPLE.

22    **Q.**   ALL RIGHT.  WHEN SHE PULLS THE SAMPLE AND SHE GETS THE  
23    RESULT, WHERE DOES SHE ENTER THE RESULT?

24    **A.**   IT'S ON A PIECE OF PAPER ON A CLIPBOARD IN THE CONTROL  
25    ROOM NEXT TO THE BOARD OPERATOR.

1 Q. DOES SHE ENTER IT ANY PLACE ELSE?

2 A. NO.

3 Q. SO NOW AFTER YOU INTERVIEWED HER, DID YOU PREPARE A  
4 SUMMARY OF THE INTERVIEW FOR ERIC PEREZ?

5 A. I TOOK NOTES OR I WROTE DOWN WHAT WAS SAID.

6 Q. ALL RIGHT.

7 A. I DON'T REMEMBER IF I SENT IT TO ERIC OR NOT.

8 Q. I'M GOING TO ASK YOU TO TAKE A LOOK AT EXHIBIT 552.  
9 DO YOU HAVE IT THERE?

10 A. YES.

11 Q. IS THAT AN EMAIL FROM GUY ROZAR TO YOU?

12 A. YES.

13 Q. AND --

14 MR. LAFAYETTE: YOUR HONOR, I WOULD LIKE TO MOVE THIS  
15 DOCUMENT INTO EVIDENCE.

16 THE COURT: ANY OBJECTION?

17 MS. SMALLETS: YES, YOUR HONOR. THERE'S NO  
18 CLARIFICATION AS TO --

19 THE COURT: I CANNOT HEAR YOU. THERE IS A MIC AT  
20 YOUR DESK OR TALK LOUDER.

21 MS. SMALLETS: YES, YOUR HONOR. THERE IS NO  
22 CLARIFICATION AS TO WHO WROTE WHICH PORTIONS OF THIS EMAIL.

23 THE COURT: ALL RIGHT. LAY SOME FOUNDATION.

24 BY MR. LAFAYETTE:

25 Q. TAKE A LOOK AT THE FIRST PAGE. THE FIRST PAGE IS JUST

1 IDENTIFICATION OF AN EMAIL, RIGHT?

2 A. YES.

3 Q. WHY DON'T YOU TAKE A LOOK AT THE SECOND PAGE.

4 TELL ME WHAT WE ARE LOOKING AT HERE.

5 A. LOOKS LIKE A SYNOPSIS OF THE MEETING WE HAD REGARDING THE  
6 BAKER TANK.

7 Q. AND WHO PREPARED THIS SYNOPSIS?

8 A. I'M NOT SURE IF GUY WROTE THIS OR ME. I CAN'T REMEMBER.

9 Q. YOU CAN'T REMEMBER?

10 A. I MEAN, THERE'S PROBABLY A COPY OF THE ONE I SENT. I  
11 DON'T KNOW IF THIS IS MINE OR HIS.

12 Q. OKAY. TAKE A LOOK AT THE --

13 A. I THINK IT IS GUY'S. IT'S MINE.

14 Q. YOU THINK WHAT?

15 A. I THINK THIS IS GUY ROZAR'S.

16 Q. WRITING TO YOU?

17 A. YES.

18 MR. LAFAYETTE: I WOULD LIKE TO MOVE THIS INTO  
19 EVIDENCE, YOUR HONOR.

20 MS. SMALLETS: NO OBJECTION.

21 THE COURT: ADMITTED, 552.

22 (DEFENDANT'S EXHIBIT 552 RECEIVED IN EVIDENCE)

23 BY MR. LAFAYETTE:

24 Q. PARTICULARLY LOOKING AT THE RED LANGUAGE HERE, CIARA  
25 STATED THE STL HELPS HER OUT AND CHOSE HER THINGS IN THE

1 FIELD. CIARA STATED THAT IF SHE HAD LOOKED MORE CLOSELY AT  
2 THE VALVE ON THE REQUEST BAKER TANK THAT SHE WOULD HAVE  
3 NOTICED THAT IT WAS NOT HOOKED UP TO ANYTHING. DO YOU SEE  
4 THAT?

5 **A.** YES.

6 **Q.** DO YOU RECALL WHETHER OR NOT MS. NEWTON MADE THOSE  
7 COMMENTS DURING THE MEETING ON THE 22ND?

8 **MS. SMALLETS:** OBJECTION, LEADING.

9 **THE COURT:** SUSTAINED.

10 **BY MR. LAFAYETTE:**

11 **Q.** WHO MADE THOSE COMMENTS?

12 **A.** CIARA.

13 (DISPLAYED ON SCREEN.)

14 **Q.** NOW, AT SOME POINT IN TIME DID YOU PREPARE AN EMAIL TO  
15 MR. PEREZ?

16 **A.** I BELIEVE SO.

17 **Q.** TAKE A LOOK AT EXHIBIT 554. DO YOU HAVE IT THERE IN FRONT  
18 OF YOU?

19 **A.** YES.

20 **Q.** IS THAT AN EMAIL, AT THE BOTTOM DATED MONDAY JULY 25, FROM  
21 YOU TO MR. PEREZ, AN EMAIL AT THE TOP FROM MR. PEREZ TO  
22 MS. LAYNE?

23 **A.** YES.

24 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT  
25 INTO EVIDENCE, YOUR HONOR.

1           **THE COURT:** ANY OBJECTION?

2           **MS. SMALLETS:** NO OBJECTIONS, YOUR HONOR.

3           **THE COURT:** ADMITTED.

4           (DEFENDANT'S EXHIBIT 554 RECEIVED IN EVIDENCE)

5                           (DISPLAYED ON SCREEN.)

6           **BY MR. LAFAYETTE:**

7           **Q.** I WOULD LIKE TO YOU TAKE A LOOK AT BATES STAMP 110. AT  
8           THE VERY BOTTOM OF THE PAGE?

9           **A.** 110?

10          **Q.** DO YOU HAVE IT THERE?

11          **A.** YES.

12          **Q.** AND IN THE PARAGRAPH THAT STARTS MARCH 23, 2016, I'M  
13          REALLY FOCUSED ON WHERE I JUST PUT A RED MARK, DO YOU SEE  
14          THAT?

15          **A.** YES.

16          **Q.** CIARA SAID THAT -- JUST ABOVE THAT, THE SENTENCE ABOVE IT  
17          SAYS CIARA SAID IT ISN'T FAIR THAT OTHER PEOPLE CAN COME IN  
18          LATE AND NOT GET WRITTEN UP IF THEY BRING IN DONUTS, DO YOU  
19          SEE THAT?

20          **A.** YES.

21                   **MS. SMALLETS:** OBJECTION, LEADING.

22                   **THE COURT:** HE IS JUST ASKING IF HE SEES A PORTION.  
23          KEEP GOING. OVERRULED.

24          **BY MR. LAFAYETTE:**

25          **Q.** DO YOU RECALL ANYTHING ABOUT DONUTS BEING MENTIONED IN THE



1 MEETING?

2 A. YES.

3 Q. TELL ME WHAT YOU RECALL.

4 A. AS IT STATES, CIARA SAID IT ISN'T FAIR THAT IF PEOPLE COME  
5 IN LATE AND THEY BRING IN DONUTS, THEY WON'T GET WRITTEN UP.

6 Q. OKAY. NOW I WOULD LIKE FOR YOU -- AND THIS DOCUMENT, WAS  
7 THIS A SUMMARY OF THE INTERVIEW SENT TO MR. PEREZ?

8 A. YES, IT IS.

9 Q. WOULD YOU TAKE A LOOK AT EXHIBIT 555? DO YOU RECOGNIZE  
10 THIS DOCUMENT?

11 A. YES.

12 Q. TELL ME WHAT IT IS.

13 A. IT'S AN EMAIL CHAIN BETWEEN ME AND ERIC PEREZ.

14 Q. OKAY.

15 MR. LAFAYETTE: I MOVE THIS DOCUMENT INTO EVIDENCE,  
16 YOUR HONOR.

17 THE COURT: ANY OBJECTION?

18 MS. SMALLETS: NO, YOUR HONOR.

19 THE COURT: 555 IS ADMITTED.

20 (DEFENDANT'S EXHIBIT 555 RECEIVED IN EVIDENCE)

21 BY MR. LAFAYETTE:

22 Q. I WOULD LIKE YOU TO TAKE A LOOK AT EXHIBIT 562. DO YOU  
23 RECALL WHAT THIS IS?

24 A. IT'S A NOTE FROM ERIC PEREZ TO MYSELF.

25 MR. LAFAYETTE: I WOULD LIKE TO MOVE THIS DOCUMENT

1 INTO EVIDENCE, YOUR HONOR.

2 **THE COURT:** ANY OBJECTION?

3 **MS. SMALLETS:** NO, YOUR HONOR.

4 **THE COURT:** 562 IS ADMITTED.

5 (DEFENDANT'S EXHIBIT 562 RECEIVED IN EVIDENCE)

6 (DISPLAYED ON SCREEN.)

7 **BY MR. LAFAYETTE:**

8 **Q.** DID YOU SET ANY TRAPS FOR MS. NEWTON?

9 **A.** NO.

10 **Q.** ARE YOU AWARE OF ANYBODY ELSE DOING SUCH A THING?

11 **A.** NO.

12 **Q.** DURING THE TIME THAT YOU WERE WITH MS. NEWTON, OKAY, WHEN  
13 YOU WERE HER STL, TELL ME HOW YOU WORKED WITH HER.

14 **A.** KIND OF DEVELOP HER AND LEARN THE OPERATIONS. IT'S A  
15 DIFFICULT THING TO LEARN. THERE IS A LOT OF PROCEDURES, LOT  
16 OF THINGS HAPPENING. IT'S -- THERE'S A LOT THAT GOES INTO  
17 BEING AN OPERATOR. IT'S MORE THAN JUST TRAINING IN A BOOK.  
18 IT'S LEARNING HOW TO COMMUNICATE WITH PEOPLE, DEAL WITH  
19 PROBLEMS IN THE UNIT, PREPARE THINGS FOR MAINTENANCE, WORKING  
20 WITH THE CRAFTS PEOPLE. IT'S A LOT. SO I DID WHAT I COULD TO  
21 HELP HER LEARN, TO GET HER UP TO SPEED, TO BE PROFICIENT.

22 **Q.** HOW DID YOU GO ABOUT DOING THAT?

23 **A.** JUST BEING ENGAGED, BEING INVOLVED EVERY DAY, KNOWING WHAT  
24 IS HAPPENING OUT IN THE UNITS AND HELP HER WHEN THINGS COME,  
25 UP HAVING OTHER OPERATORS HELP HER IF NEEDED.

1 Q. DID YOU -- DID YOU HAVE ANY OBSERVATIONS ABOUT WHETHER OR  
2 NOT OTHERS WERE HELPING HER?

3 A. SHE WAS BEING HELPED.

4 Q. I COULDN'T HEAR YOU.

5 A. SHE WAS BEING HELPED. SHE HAD HELP.

6 Q. ALL RIGHT.

7 CAN YOU TAKE A LOOK AT EXHIBIT 564?

8 A. YES.

9 Q. WHAT IS THIS?

10 A. THIS LOOKS LIKE A NOTE THAT I SENT TO JAIME SANCHEZ, THE  
11 OMC, CIARA AND MYSELF CLEARED THE TAPS ON THE LEVEL GLASS.

12 MR. LAFAYETTE: MOVE THIS DOCUMENT INTO EVIDENCE,  
13 YOUR HONOR.

14 THE COURT: ANY OBJECTION?

15 MS. SMALLETS: NO, YOUR HONOR.

16 THE COURT: ADMITTED.

17 (DEFENDANT'S EXHIBIT 564 RECEIVED IN EVIDENCE)

18 BY MR. LAFAYETTE:

19 Q. THIS IS AN EMAIL DATED JULY 28. WHY WERE YOU CLEARING OUT  
20 THIS LEVEL GLASS ON THE ACID TANK?

21 A. SO THAT WE COULD READ THE LEVEL SO IT WOULD FUNCTION. YOU  
22 CAN BLOW AIR THROUGH THE PIPING INTO THE TANK AND KNOW THAT  
23 IT'S CLEAR OR IF YOU CAN'T, THEN IT WOULD BE PLUGGED AND WE  
24 WOULD HAVE TO GO FURTHER AND HAVE IT SERVICED, CLEANED OUT BY  
25 CRAFTS PEOPLE.

1 Q. WHEN YOU DID THIS WHAT HAPPENED?

2 A. WE CLEARED IT.

3 Q. AND WHO HELPED YOU?

4 A. CIARA AND MYSELF.

5 Q. AND WHY -- WHY WAS CIARA THE PERSON THAT HELPED YOU?

6 A. IT IS HER JOB, IT IS HER TANK, HER RESPONSIBILITY. SO  
7 IT'S OPERATION THAT WE GO THROUGH BUT TAKES TWO PEOPLE.

8 Q. DID YOU WEAR ANY PROTECTIVE GEAR?

9 A. ACID SUIT, RUBBER GLOVES.

10 Q. I WOULD LIKE FOR YOU TO TAKE A LOOK AT EXHIBIT 568. DO  
11 YOU HAVE IT THERE?

12 A. YES.

13 Q. WHAT IS THIS?

14 A. IT'S A NOTE BETWEEN MYSELF AND ERIC PEREZ.

15 MR. LAFAYETTE: I WOULD LIKE TO MOVE THIS INTO  
16 EVIDENCE, YOUR HONOR.

17 THE COURT: ANY OBJECTION?  
18 ANY OBJECTION?

19 MS. SMALLETS: JUST A MINUTE.

20 (PAUSE IN THE PROCEEDINGS.)

21 NO, YOUR HONOR.

22 THE COURT: ADMITTED, 568.

23 (DEFENDANT'S EXHIBIT 568 RECEIVED IN EVIDENCE)

24 (DISPLAYED ON SCREEN.)

25

1 **BY MR. LAFAYETTE:**

2 **Q.** THIS IS AN EMAIL AT THE BOTTOM FROM ERIC PEREZ TO YOU  
3 DATED JULY 28, 2016.

4 WHAT DID YOU UNDERSTAND HE WAS TRYING TO GET FROM YOU?

5 **A.** HE WAS ASKING ME WHERE THE DRAEGER TUBES ARE. WERE THEY  
6 LOCATED IN THE UNIT.

7 **Q.** DID YOU PROVIDE A RESPONSE ABOVE?

8 **A.** YES, I DID.

9 **Q.** I WOULD LIKE YOU TO TAKE A LOOK AT EXHIBIT 570.

10 **MR. LAFAYETTE:** I THINK 570 IS IN EVIDENCE, YOUR  
11 HONOR?

12 **THE COURT:** I BELIEVE IT IS. HOLD ON. YES, IT IS.

13 **BY MR. LAFAYETTE:**

14 **Q.** IS THIS ABOUT BUMPING THE PUMP?

15 **A.** YES.

16 **Q.** IS THERE A CONVERSATION THAT YOU HAD ELECTRONICALLY WITH  
17 MR. PEREZ ABOUT BUMPING THE PUMP?

18 **A.** YES.

19 **Q.** SO TELL ME ABOUT WHAT BUMPING THE PUMP IS ALL ABOUT.

20 **A.** A LOT OF PUMPS IN THE UNITS HAVE SPARES. IN THIS  
21 SITUATION THERE'S THREE PUMPS AND ONE PUMP IS A COMMON SPARE  
22 FOR TWO DIFFERENT SYSTEMS. IT'S A CAUSTIC SYSTEM AND IT PLUGS  
23 UP. SO EVERY NIGHT WE HAVE TO TURN THE BUMP ON BRIEFLY AND  
24 TURN IT OFF TO VERIFY IT RUNS AND DOESN'T PLUG UP. IT MAKES  
25 IT CLEAR.

1 Q. HOW BIG IS THIS PUMP?

2 A. (INDICATING.)

3 Q. ABOUT THREE BY THREE FEET?

4 A. YEAH, THE PUMP. AND THEN THERE IS ELECTRIC MOTOR THAT  
5 DRIVES IT.

6 Q. OKAY. AND SO WHY DO YOU BUMP THE PUMP?

7 A. TO VERIFY THAT IT WORKS AND TO KEEP IT FROM PLUGGING. IF  
8 IT SITS STAGNANT TOO LONG, IT WILL FILL UP WITH SALTS AND IT  
9 WILL PLUG AND IT WON'T WORK WHEN WE NEED IT.

10 Q. AND SO WHAT HAPPENED HERE WITH REGARD TO BUMPING THE PUMP?

11 A. I NOTICED I WASN'T HEARING HER DO IT. YOU CALL INTO THE  
12 BOARD OPERATOR, HEY, I NEED TO START THE PUMP, I NEED TO BUMP  
13 THE PUMP. YOU SHOULD HEAR THAT FROM THE HP-2 OPERATOR EVERY  
14 NIGHT.

15 SO I ASKED HER IF SHE WAS DOING IT, AND SHE SAID SHE  
16 WASN'T, SHE WASN'T SURE IF SHE SHOULD DO IT. SO AFTER THAT  
17 SHE STARTED DOING IT.

18 Q. ALL RIGHT. NOW, HAD SHE BEEN DOING SOMETHING TO  
19 ACKNOWLEDGE THAT SHE HAD BUMPED THE PUMP?

20 A. YES. YOU MARK -- IT'S A YES OR NO QUESTION IN OUR  
21 HAND-HELD COMPUTERS THAT WE USE TO RECORD OUR READINGS ON. SO  
22 IT ASKS YOU -- THE QUESTION IS -- OR IT SAYS BUMP PUMP 51,  
23 WHATEVER, 56, I THINK, AND YES OR NO.

24 SO YOU CAN CHECK THE BOX YES OR NO. IF YOU PUT IN NO, IT  
25 HAS A WARNING, IT FLAGS IT AND SAYS, HEY, TELL THE SHIFT TEAM

1 LEADER, TELL THE BOARD OPERATOR. IF YOU PUT NO, IT LETS YOU  
2 KNOW THAT YOU NEED TO DO IT.

3 Q. AND DO YOU HAVE -- WHAT HAD SHE BEEN DOING?

4 A. PUTTING YES.

5 Q. THANK YOU.

6 NOW, DID YOU GET THE -- WHAT I JUST HIGHLIGHTED IN YELLOW  
7 FROM MR. PEREZ?

8 A. NO. THE SCREEN IS BLACK.

9 Q. YOUR SCREEN IS BLANK?

10 (DISPLAYED ON SCREEN.)

11 NOW DO YOU SEE WHAT I HIGHLIGHTED IN YELLOW?

12 A. YES.

13 Q. ALL RIGHT.

14 THE COURT: WHAT IS THE QUESTION AGAIN?

15 BY MR. LAFAYETTE:

16 Q. DID YOU REVIEW WHAT -- DID YOU READ WHAT MR. PEREZ WROTE  
17 AT THE VERY TOP THAT I HAVE HIGHLIGHTED IN YELLOW?

18 A. YES.

19 Q. DID YOU HAVE AN OPINION AS TO WHETHER OR NOT HE WAS RIGHT?

20 A. YEAH, I AGREE WITH HIM.

21 Q. CAN YOU TAKE A LOOK AT EXHIBIT 571.

22 MR. LAFAYETTE: I THINK THIS DOCUMENT IS IN EVIDENCE,  
23 YOUR HONOR?

24 THE COURT: 571 -- NO, I HAVE NOT ADMITTED 571.

25 MR. LAFAYETTE: OKAY.

1 **BY MR. LAFAYETTE:**

2 **Q.** DO YOU RECOGNIZE EXHIBIT 571, SIR?

3 **A.** I DO, YES.

4 **Q.** TELL ME WHAT IT IS.

5 **A.** IT'S AN IM CONVERSATION BETWEEN MYSELF AND ERIC PEREZ. IT  
6 IS LIKE A TEXTING ON THE DESKTOP COMPUTER.

7 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT  
8 INTO EVIDENCE, YOUR HONOR.

9 **THE COURT:** ANY OBJECTION?

10 **MS. SMALLETS:** YOUR HONOR, IT HAS BEEN ADMITTED AS  
11 EXHIBIT 37. NO OBJECTION.

12 **MR. LAFAYETTE:** I WILL REFER TO IT AS EXHIBIT 37 TO  
13 ELIMINATE REDUNDANCY.

14 **THE COURT:** OKAY. GO AHEAD.

15 **BY MR. LAFAYETTE:**

16 **Q.** WE ARE GOING TO CALL THIS EXHIBIT 37. OKAY?

17 **A.** OKAY.

18 **Q.** SO IN LOOKING AT EXHIBIT 37, DO YOU READ THIS FROM THE TOP  
19 DOWN?

20 **A.** YES.

21 **Q.** SO AT THE VERY BEGINNING OF THIS, THERE IS A MESSAGE HERE  
22 THAT YOU WRITE: JUST GAVE CIARA HER MONTHLY REVIEW.

23 DO YOU SEE THAT?

24 **A.** YES.

25 (DISPLAYED ON SCREEN.)



1 Q. SHE ASKED IF I GAVE THE SAME COMMENTS TO BILL ON HIS  
2 REVIEW.

3 DO YOU REMEMBER THAT HAPPENING?

4 A. YES, I DO.

5 Q. NOW, DID YOU PROVIDE AN ANSWER TO HER WITH REGARD TO HER  
6 QUESTION?

7 A. I SAID I DON'T REMEMBER AND IT'S NOT FOR ME TO TELL HER  
8 WHAT THE OTHER PEOPLE GOT.

9 Q. IS THERE A REASON WHY YOU DIDN'T TELL HER WHAT YOU HAD  
10 GIVEN BILL?

11 A. THAT WOULDN'T BE RIGHT.

12 Q. AND DID YOU GET A RESPONSE BACK FROM MR. PEREZ TO YOUR  
13 COMMENTS?

14 A. YES.

15 Q. IS THIS THE RESPONSE THAT I HIGHLIGHTED HERE WHERE IT  
16 SAYS: WHY IS SHE ASKING ABOUT BILL?

17 A. YES, IT IS.

18 Q. NOW, HE'S USING A PHRASE HERE WHERE HE SAYS: SHE IS GOING  
19 TO BE GOING OFF SUBJECT AND SAYING WE ARE NOT TREATING HER  
20 FAIR.

21 DO YOU SEE THAT?

22 A. YES.

23 Q. UP UNTIL THIS POINT HAD SHE MENTIONED TO YOU IN ANY WAY  
24 SOMETHING ABOUT FAIRNESS?

25 A. YES.

1 Q. UP UNTIL THIS POINT HAD SHE SAID ANYTHING ABOUT HER GENDER  
2 IN CONNECTION WITH FAIRNESS?

3 A. I DON'T REMEMBER THAT.

4 Q. UP UNTIL THIS POINT HAD SHE SAID ANYTHING -- DO YOU RECALL  
5 WHAT SHE SAID ABOUT FAIRNESS?

6 A. IN THE MEETING ON THE SATURDAY -- OR FRIDAY WITH GUY ROZAR  
7 AND MYSELF, SHE SAID IT WASN'T FAIR REGARDING THE TARDIES AND  
8 THEN DURING THIS MEETING WHEN THIS HAPPENED, GIVING HER HER  
9 REVIEW, SHE IMPLIED THAT WE WEREN'T TREATING HER FAIRLY.

10 Q. OKAY.

11 A. I CAN'T REMEMBER THE EXACT WORDS BUT IT WAS IMPLIED.

12 Q. NOW, THERE'S A STATEMENT THAT I'M GOING TO SHOW YOU THAT  
13 YOU WRITE.

14 (DISPLAYED ON SCREEN.)

15 DO YOU SEE THAT?

16 A. YES.

17 Q. WHAT DID YOU MEAN WHEN YOU SAID SHE'S PUSHING HARD ON THE  
18 EQUALITY THING?

19 A. I WAS TRYING TO CONVEY TO ERIC THAT THIS IS HAPPENING,  
20 THAT SHE IMPLYING THAT SHE'S NOT BEING TREATED FAIRLY. THAT'S  
21 MY WAY OF CONVEYING IT TO HIM, THIS EMAIL AT 4:00 IN THE  
22 MORNING.

23 Q. DO YOU WRITE A LOT?

24 A. NO, I DON'T.

25 Q. OKAY. AND YOU RECEIVED THIS COMMENT FROM MR. PEREZ AFTER

1 YOU WROTE YOURS?

2 A. YES.

3 Q. OKAY. I WOULD LIKE FOR YOU TO TAKE A LOOK AT EXHIBIT 572.

4 DO YOU HAVE IT IN FRONT OF YOU?

5 A. YES.

6 Q. DO YOU RECOGNIZE WHAT THAT IS?

7 A. IT'S THE PROGRESS REPORT.

8 Q. AND WHOSE PROGRESS REPORT IS IT?

9 A. CIARA NEWTON.

10 MR. LAFAYETTE: I THINK, YOUR HONOR, THAT HAS BEEN  
11 ADMITTED AS EXHIBIT 40.

12 MS. SMALLETS: OKAY.

13 THE COURT: ALL RIGHT. SO YOU ARE GOING TO REFERENCE  
14 IT AS 40, MR. LAFAYETTE?

15 MR. LAFAYETTE: YES.

16 THE COURT: WERE YOU GOING TO REFERENCE IT AS 40?

17 MR. LAFAYETTE: YES, I WILL REFERENCE IT AS  
18 EXHIBIT 40.

19 THE COURT: OKAY.

20 (DISPLAYED ON SCREEN.)

21 BY MR. LAFAYETTE:

22 Q. THIS IS YOUR REVIEW, YOUR ASSESSMENT?

23 A. I BELIEVE SO, YES.

24 Q. LET'S TAKE A LOOK AT THE SECOND PAGE. DO YOU SEE THE  
25 HIGHLIGHTED, WHAT I EXPANDED? DO YOU SEE THAT?

1       **A.**   YES.

2       **Q.**   SO LOOKING AT THIS DID YOU TAKE ANY ACTION AT THIS POINT  
3       IN TIME TO STOP MS. NEWTON FROM MOVING FORWARD?

4       **A.**   NO.

5       **Q.**   NOW THERE HAS BEEN SOME DISCUSSION ABOUT SOMETHING CALLED  
6       THE AS ACID TANK, DO YOU REMEMBER THAT?

7       **A.**   YES.

8       **Q.**   FOR WHATEVER THAT WAS, DID YOU HOLD WHATEVER HAPPENED  
9       THERE AGAINST HER?

10      **A.**   NO.

11               **MS. SMALLETS:**   OBJECTION, LEADING.

12               **THE COURT:**   SUSTAINED.   BUT HE HAS ANSWERED, I'M NOT  
13       GOING TO STRIKE IT.

14               KEEP THE LEADING DOWN.

15      **BY MR. LAFAYETTE:**

16      **Q.**   NOW AFTER YOU DID YOUR ASSESSMENT, DID YOU CONTINUE TO  
17       HAVE ANY RESPONSIBILITIES WITH REGARD TO MS. NEWTON?

18      **A.**   SHORTLY AFTER THIS REVIEW I CHANGED TEAMS.

19      **Q.**   WHERE DID YOU GO?

20      **A.**   TO TEAM ONE.   TEAM FOUR WAS A TEMPORARY ASSIGNMENT FOR ME  
21       UNTIL RICHARD METCALF CAME BACK FROM TURNAROUND.

22      **Q.**   NOW DO YOU KNOW THE NAME DEANNA MARTINEZ?

23      **A.**   YES, I DO.

24      **Q.**   WHO IS MS. MARTINEZ?

25      **A.**   SHE IS AN OPERATOR.   NOW SHE'S A REFINERY SAFETY LEADER,

1 KIND OF LIKE THE ON-SITE FIRE CHIEF. BUT SHE WAS AN OPERATOR  
2 ON TEAM FOUR.

3 Q. TEAM FOUR. WHICH TEAM WAS MS. NEWTON ON?

4 A. TEAM FOUR.

5 Q. WERE THEY ON THE SAME TEAM?

6 A. YES.

7 Q. AND SHE -- MS. MARTINEZ MARCH ON OPCEN NORTH?

8 A. NO. SHE WAS ON OPCEN SOUTH.

9 Q. AT SOME POINT IN TIME DID MS. MARTINEZ COME TO YOU  
10 CONCERNING MS. NEWTON?

11 A. YES.

12 Q. AND WHAT DID SHE SAY TO YOU?

13 MS. SMALLETS: OBJECTION, HEARSAY.

14 THE COURT: SUSTAINED.

15 BY MR. LAFAYETTE:

16 Q. I WANT TO FOCUS YOUR ATTENTION TO SEPTEMBER 2016, ALL  
17 RIGHT?

18 A. OKAY.

19 Q. IN SEPTEMBER OF -- SEPTEMBER OF -- I WOULD LIKE TO TAKE  
20 YOUR ATTENTION TO EXHIBIT 580.

21 MR. LAFAYETTE: WHICH I THINK IS IN EVIDENCE, YOUR  
22 HONOR?

23 THE COURT: YES.

24 (DISPLAYED ON SCREEN.)

1 **BY MR. LAFAYETTE:**

2 **Q.** DO YOU HAVE IT THERE?

3 **A.** YES.

4 **Q.** 580 CONTAINS AT THE BOTTOM AN EMAIL FROM MR. PEREZ TO A  
5 NUMBER OF PEOPLE, DO YOU SEE THAT?

6 **A.** YES.

7 **Q.** DID YOU RECEIVE THIS EMAIL?

8 **A.** YES, I DID.

9 **Q.** AND WHAT DO YOU UNDERSTAND WAS BEING ASKED OF YOU IN  
10 CONNECTION WITH THIS EMAIL?

11 **A.** TO RANK -- NOT RANK. TO RATE THE NEW HIRES BASED ON THE  
12 ONE THROUGH FIVE SCALE.

13 **Q.** WHAT DID YOU UNDERSTAND THE AREAS WERE FOR THE RATINGS?

14 **A.** PERMITTING, ATTITUDE BEHAVIORS, ISOLATING, AND WORK ETHIC.  
15 AND THEN HOW LIKELY WOULD YOU BE TO HIRE THEM.

16 **Q.** DID YOU UNDERSTAND HOW THIS ONE THROUGH FIVE SCALE WAS  
17 SUPPOSED TO WORK?

18 **A.** YES.

19 **Q.** HOW WAS THAT?

20 **A.** ONE IS NOT SO GOOD AND FIVE IS VERY GOOD.

21 **Q.** OKAY. DID YOU PREPARE A RESPONSE TO THIS REQUEST?

22 **A.** YES, I DID.

23 **Q.** WILL YOU TAKE A LOOK AT THE TOP OF THE DOCUMENT WHERE IT  
24 SAYS WEDNESDAY SEPTEMBER 14, 2016.

25 DO YOU SEE THAT?

1       **A.**   YES, I DO.

2       **Q.**   IS THAT WHEN YOU PREPARED YOUR RESPONSE?

3       **A.**   I BELIEVE SO, YES.

4       **Q.**   TAKE A LOOK AT THE SECOND PAGE AND THE THIRD PAGE.   DO YOU  
5       RECOGNIZE THOSE DOCUMENTS?

6       **A.**   YES, I DO.

7       **Q.**   WHAT IS THAT?

8       **A.**   IT'S MY RESPONSE, MY REVIEW FOR CIARA NEWTON FOR THIS.

9       **Q.**   WITH REGARD TO THE FIRST ITEM HERE, PERMITTING, WHAT DID  
10      YOU ASSIGN HER?

11      **A.**   TWO.

12      **Q.**   TWO.   AND WHY DID YOU GIVE HER A TWO?

13      **A.**   IT WAS MY IMPRESSION THAT SHE NEEDED HELP UNDERSTANDING  
14      THINGS AND THERE WAS AN INCIDENT WHERE SHE WROTE A BAD PERMIT  
15      FOR THE HYDROGEN COMPRESSORS.

16      **Q.**   WHAT DID YOU DO MEAN BY THAT?

17      **A.**   SHE FROM WHAT -- I WASN'T THERE BUT, FROM WHAT WAS RELATED  
18      TO ME, SHE WROTE A PERMIT, NOT UNDERSTANDING WHAT THE JOB WAS,  
19      DIDN'T GET CLARIFICATION AND WE NARROWLY AVOIDED AN ACCIDENT.

20      **Q.**   WITH REGARD TO ATTITUDE, BEHAVIORS, AND ENERGIZING, WHAT  
21      DO YOU THERE?

22      **A.**   A ONE.

23      **Q.**   WHY?

24      **A.**   CIARA WASN'T ENGAGED.   SHE WAS THERE AND WOULD SAY HI IN  
25      THE MORNING BUT SHE WASN'T ENGAGED IN THE JOB, TRYING TO BE

1 INVOLVED WITH IT, LEARN MORE. THAT DRIVE THAT -- I'VE NEVER  
2 SEEN A NEW PERSON NOT WANT TO BE OUT THERE DOING THINGS,  
3 LEARNING STUFF, BEING INVOLVED. WHEN THINGS HAPPEN, GET RADIO  
4 CALLS. IT IS USUALLY THE NEW HIRES THAT ARE OUT THERE FIRST  
5 IN LINE READY TO... WHAT CAN I DO? WHAT CAN I LEARN HERE?  
6 CIARA JUST DIDN'T HAVE THAT. I NEVER SAW THAT IN HER.

7 **Q.** ALL RIGHT. WHAT IS ISOLATING?

8 **A.** ISOLATING IS TAKING EQUIPMENT OUT OF SERVICE FOR USUALLY  
9 MAINTENANCE AND REPAIRS. WE HAVE A PRETTY INVOLVED PROCEDURE  
10 THAT WE USE TO MAKE SURE THAT WE ARE -- WE HAVE ENOUGH  
11 BARRIERS IN PLACE FOR PEOPLE TO OPEN UP THE PIPES AND THE  
12 PUMPS TO NOT GET EXPOSED. WE HAVE TO RUN A MATRIX TO MAKE  
13 SURE THAT --

14 **Q.** WHAT DID YOU GIVE HER AS AN ASSESSMENT HERE?

15 **A.** TWO.

16 **Q.** WHY DID YOU DO THAT?

17 **A.** IT WAS MY OPINION BASED ON WHAT I HAD SEEN AS FAR AS  
18 OPENING VALVES, CLOSING VALVES, SHE DIDN'T HAVE A GOOD GRASP  
19 ON IF THEY WERE OPEN OR CLOSED. USUALLY YOU DO IT A COUPLE OF  
20 TIMES AND YOU HAVE IT DOWN BUT IT DIDN'T SEEM TO -- WHAT DO  
21 YOU SAY -- BREAK THROUGH. SHE WASN'T GETTING IT.

22 **Q.** I WANT TO SHOW YOU SOMETHING AT THE BOTTOM OF THE  
23 PARAGRAPH WHERE IT SAYS: I DREW A DIAGRAM.

24 DO YOU SEE THAT?

25 **A.** YES.



1 Q. EXPLAINED OF A CLOCK AND EXPLAINED CLOCKWISE AND  
2 COUNTERCLOCKWISE AND TAUGHT HER ABOUT THE PHRASE LEFTY LUCY,  
3 RIGHTY TIGHTY.

4 WHAT DOES THAT MEAN?

5 A. IT IS JUST A PHRASE THAT HELPS YOU REMEMBER WHICH WAY TO  
6 TURN THINGS TO OPEN AND CLOSE THEM.

7 Q. OKAY. AND YOU EXPLAINED THAT TO HER?

8 A. YES.

9 Q. YOU WRITE: SHE AGAIN OPENED ONE VALVE AND CLOSED THE  
10 OTHER. I AM NOT CONFIDENT THAT CIARA COULD TAKE AN ISOLATION  
11 PACKAGE INTO THE FIELD AND IDENTIFY ANY DISCREPANCIES OR  
12 EXECUTE IT PROPERLY.

13 WHY DID YOU WRITE THAT?

14 A. THAT WAS MY BELIEF.

15 Q. IS THAT SOMETHING THAT OPERATORS HAVE TO DO?

16 A. YES. IT'S A VERY BIG PORTION OF OUR JOB.

17 Q. THEN THERE IS WORK ETHIC.

18 (DISPLAYED ON SCREEN.)

19 DID YOU WRITE THIS?

20 A. I DID.

21 Q. WHAT ASSESSMENT DID YOU GIVE HER ON WORK ETHICS?

22 A. A ONE.

23 Q. WHY DID YOU DO THAT?

24 A. THE SAME LACK OF ENGAGEMENT, NOT BEING THERE, NOT WANTING  
25 TO BE INVOLVED. IT JUST WASN'T THERE.

1 Q. DOWN AT THE BOTTOM OF THAT: THERE IS EVERYTHING YOU KNOW  
2 TODAY, HOW LIKELY WOULD YOU HIRE THEM TODAY. AND WHAT DID YOU  
3 GIVE HER?

4 A. A ONE.

5 Q. WHY DON'T YOU READ THE BALANCE OF WHAT YOU WROTE AFTER  
6 THAT.

7 A. IT SAYS: NO, I DON'T THINK CIARA IS A GOOD MATCH FOR  
8 OPERATIONS. I'M VERY AFRAID THAT SHE WILL HURT HERSELF OR  
9 SOMEONE ELSE OR POSSIBLY CAUSE A PROCESS INCIDENT. I HAVE  
10 LOST SLEEP AT NIGHT FROM CONCERNS AS HER STL FEARING THAT  
11 SOMETHING BAD WILL HAPPEN.

12 Q. WHY DID YOU RIGHT THAT?

13 A. IT WAS TRUE. I WAS VERY CONCERNED. WHEN WE HAVE  
14 ACCIDENTS IN OUR LINE OF WORK -- WHAT WE MAKE IS MEANT TO  
15 BURN. IF IT DOESN'T BURN, THEN WE ARE NOT DOING A GOOD JOB.  
16 WE HEAT IT UP PASSED THE POINT WHERE IT WILL BURN. IF IT  
17 COMES OUT OF THE PIPES, IT'S ON FIRE AND IT DOESN'T STOP.  
18 THERE'S A LOT. THE VOLUME IS TREMENDOUS. THE POTENTIAL OF  
19 MAKING THE WRONG MOVE, NOT ACTING WHEN YOU ARE SUPPOSED TO  
20 ACT, IT GETS PEOPLE KILLED ALL THE TIME.

21 AND I COME TO WORK THERE AND EVERYONE ELSE THAT COMES TO  
22 WORK THERE, WHEN WE BADGE IN, WE KNOW WE HAVE TO BE ON POINT.  
23 WE HAVE TO BE TARGETED AND FOCUSED. EVERYTHING WE DO HAS TO  
24 BE DONE RIGHT BECAUSE IF WE DON'T, PEOPLE DIE. THE COMMUNITY  
25 CAN BE AFFECTED. IT CAN SEND POISONOUS CLOUDS OUT TO --

1 ELEMENTARY SCHOOL TWO BLOCKS AWAY FROM OUR REFINERY. IT IS A  
2 LOT TO BEAR.

3 Q. HOW UPSET OR CONCERNED WERE YOU?

4 A. I WAS VERY CONCERNED.

5 Q. DID YOU DO ANYTHING ABOUT IT OTHER THAN THIS?

6 A. YES.

7 Q. WHAT?

8 A. I WENT TO THE DOCTOR FOR ANXIETY AND NOT BEING ABLE TO  
9 SWALLOW.

10 Q. ALL RIGHT. NOW, I WOULD LIKE FOR YOU TO TAKE A LOOK AT  
11 EXHIBIT 594. DO YOU HAVE IT IN FRONT OF YOU?

12 A. YES.

13 Q. THIS IS ACTUALLY AN EMAIL FROM ERIC PEREZ TO CHRISTINE  
14 LAYNE, DO YOU SEE THAT?

15 A. YES.

16 MR. LAFAYETTE: I THINK THIS IS ALREADY IN EVIDENCE.

17 THE COURT: IT IS.

18 BY MR. LAFAYETTE:

19 Q. AND SO I'M GOING TO ASK YOU: DO YOU REMEMBER BEING  
20 INTERVIEWED BY MR. PEREZ?

21 A. YES.

22 Q. WAS ANYONE ELSE PRESENT?

23 A. I DON'T REMEMBER.

24 Q. OKAY. DO YOU KNOW HOW THE INTERVIEW CAME ABOUT?

25 A. NO. THEY JUST CALLED ME.

1 Q. OKAY.

2 DID THEY ASK YOU ABOUT THE ACID SPILL?

3 A. YES.

4 Q. AND DID YOU -- DID THEY ASK YOU ABOUT THE OTHER  
5 INCIDENCES?

6 A. I DON'T REMEMBER.

7 Q. I WOULD LIKE YOU TO TAKE A LOOK AT BATES STAMP PAGE 127.  
8 DO YOU SEE IT THERE?

9 A. YES.

10 Q. THERE'S A NOTATION HERE --

11 MS. SMALLETS: OBJECTION, YOUR HONOR, HE IS NOT  
12 EITHER THE RECIPIENT --

13 THE COURT: SO WE CANNOT HEAR YOU. AND I NEED AN  
14 EXHIBIT NUMBER AGAIN.

15 MR. LAFAYETTE: WE ARE AT EXHIBIT 594. I THINK IT IS  
16 IN EVIDENCE.

17 THE COURT: IT IS IN EVIDENCE.

18 MS. SMALLETS: BUT HE IS NEITHER THE RECIPIENT NOR  
19 THE SENDER --

20 THE COURT: SO YOUR OBJECTION IS NOT ON THE RECORD  
21 BECAUSE WE CANNOT HEAR IT. THERE IS A MICROPHONE THERE.

22 MS. SMALLETS: OBJECTION --

23 THE COURT: OR COME UP TO THE MIC HERE BUT WE CANNOT  
24 HEAR YOU.

25 MS. SMALLETS: YOUR HONOR, OBJECTION, THE WITNESS IS

1 NEITHER THE SENDER NOR THE RECIPIENT OF THIS EMAIL.

2 **THE COURT:** WHAT IS THE QUESTION?

3 STAND THERE.

4 **MR. LAFAYETTE:** TAKE A LOOK AT PAGE 127. LOOK AT THE  
5 CALL-OUT LANGUAGE THERE, AND DO YOU KNOW WHAT THAT'S ABOUT?

6 **THE COURT:** I CAN'T EVEN TELL WHAT YOU ARE TELLING  
7 HIM TO LOOK AT.

8 **MR. LAFAYETTE:** THE PARAGRAPH WHERE IT SAYS: THEN  
9 CAMERON DISCUSSED THE INFORMATION WITH DONNIE, THE STL. DO  
10 YOU KNOW WHAT THAT IS ABOUT?

11 **THE COURT:** YES OR NO.

12 **THE WITNESS:** YES.

13 **BY MR. LAFAYETTE:**

14 **Q.** TELL ME WHAT IT'S ABOUT.

15 (CELL PHONE RINGS.)

16 **THE COURT:** OFF.

17 ALL RIGHT. ANSWER THE QUESTION.

18 **THE WITNESS:** THIS IS REGARDING SUBMITTING A ZERO TO  
19 SIXTY FOR THE ACID TANK INCIDENT.

20 **BY MR. LAFAYETTE:**

21 **Q.** AFTER WHAT?

22 **A.** SUBMITTING A ZERO TO SIXTY FOR THE ACID TANK INCIDENT.

23 **Q.** OKAY. NOW, YOU HAVE A HELMET, DON'T YOU?

24 **A.** YES.

25 **Q.** I'LL JUST ASK YOU THIS.

1                   **MR. LAFAYETTE:** IF I CAN PUT THIS ON THE ELMO, YOUR  
2 HONOR?

3                                   (DISPLAYED ON SCREEN.)

4           **BY MR. LAFAYETTE:**

5           **Q.** DO YOU KNOW WHAT WE ARE LOOKING AT HERE? LOOKS LIKE TWO  
6 HARD HATS. THE ONE IN THE FRONT, THIS ONE, WHOSE HAT IS THAT?

7           **A.** THAT'S MINE.

8           **Q.** WHAT ARE THESE THINGS ON IT?

9           **A.** STICKERS.

10          **Q.** WHY DO YOU HAVE STICKERS ON YOUR HARD HAT?

11          **A.** DECORATE, I GUESS.

12          **Q.** OKAY.

13          **A.** WELL, TWO OF THEM ARE -- THE LEVEL II PERMIT CERTIFIED  
14 MEANS I CAN WRITE THE HIGHER LEVEL PERMITS FOR WELDING AND  
15 CONFINED SPACE ENTRIES. THE OTHER ONE IS A LOW ENERGY PERMIT.  
16 THE DIMERSOL ONE IS A STICKER FROM A TURNAROUND THAT WE HAD.  
17 EDELBROCK IS AN AUTO PARTS MANUFACTURER THAT I LIKE. AND THEN  
18 THE ROCK AND ROLL HANDS, MY DAUGHTER GAVE ME THAT STICKER.

19          **Q.** I'M GOING TO SHOW YOU -- THE ONE AT THE TOP.

20 DO YOU RECOGNIZE THESE STICKERS?

21          **A.** YEAH.

22          **Q.** WHAT ARE THEY?

23          **A.** TURNAROUND STICKERS. SHELL MARTINEZ STICKERS.

24          **Q.** ALL RIGHT. DID YOU HAVE THE AUTHORITY TO FIRE ANYBODY?

25          **A.** NO.

1 Q. DID YOU HAVE THE AUTHORITY TO HIRE ANYBODY?

2 A. NO.

3 Q. IF YOU WANTED TO PUT SOMETHING OTHER THAN A COACHING AND  
4 COUNSELING ON SOMEONE'S FILE, WHAT WOULD YOU HAVE TO HAVE  
5 DONE?

6 A. GO THROUGH ERIC, HR, AND HAVE A MEETING WITH THE UNION.

7 Q. DID YOU EVER PUT ANYTHING OTHER THAN A COACHING AND  
8 COUNSELING IN MS. NEWTON'S PD LOG?

9 A. NO.

10 Q. NOW, DO YOU ASK HER ANYTHING ABOUT WHETHER HER -- WHAT HER  
11 HUSBAND THOUGHT ABOUT HER WORKING IN A REFINERY?

12 A. IT MAY HAVE COME UP IN CONVERSATION.

13 Q. WHY?

14 A. JUST HAVING A GET-TO-KNOW-YOU TYPE OF CONVERSATION. AND  
15 SHIFT WORK IS HARD. WORKING ROTATING SHIFTS, YOU REALLY NEED  
16 TO HAVE A SUPPORTIVE SPOUSE. IF YOU DON'T, THEN IT GETS HARD.  
17 THERE IS A HIGH DIVORCE RATE IN SHIFT WORKING PEOPLE. SO IT'S  
18 GOOD TO HAVE THE SUPPORT. YOU ARE GOING TO MISS HALF OF  
19 WEEKENDS OF THE YEAR, CHRISTMAS, THANKSGIVING, WHATEVER  
20 HOLIDAYS YOU LIKE, BIRTHDAYS. THEY ARE ALL GOING TO BE  
21 SACRIFICED.

22 Q. HAVE YOU HAD CONVERSATIONS LIKE THAT WITH OTHER PEOPLE?

23 A. ALL THE TIME.

24 Q. MEN?

25 A. YES.

1           **MR. LAFAYETTE:** NO FURTHER QUESTIONS, YOUR HONOR.

2           **THE COURT:** ANY CROSS WITHIN THE SCOPE OF THE EXAM?

3           **MS. SMALLETS:** YES, YOUR HONOR.

4                           **CROSS-EXAMINATION**

5           **BY MS. SMALLETS:**

6           **Q.** MR. CURRAN, MR. LAFAYETTE SHOWED YOU EXHIBIT 580, WHICH IS  
7           AN EMAIL THAT YOU SENT IN SEPTEMBER AND YOU REFERRED TO AN  
8           INCIDENT WITH RESPECT TO PERMITTING. YOU WEREN'T PRESENT WHEN  
9           THAT ALLEGED INCIDENT TOOK PLACE, WERE YOU?

10          **A.** CORRECT.

11          **Q.** NOW, ON JULY 29TH, YOU COMPLETED A PERFORMANCE EVALUATION  
12          FOR MS. NEWTON IN WHICH YOU SAID SHE SHOULD CONTINUE AS AN  
13          OPERATOR, CORRECT?

14          **A.** CORRECT.

15          **Q.** AND YOU DIDN'T SUPERVISE MS. NEWTON BETWEEN JULY 29TH AND  
16          SEPTEMBER 14TH EMAIL, DID YOU?

17          **A.** PRETTY CLOSE TO THOSE DATES, YES.

18          **Q.** AT THE TIME YOU WROTE THIS EMAIL, EXHIBIT 580, YOU KNEW  
19          MR. PEREZ WANTED TO FIRE MS. NEWTON, DIDN'T YOU?

20          **A.** THAT IS NOT TRUE.

21          **Q.** YOU DIDN'T KNOW THAT?

22          **A.** NO.

23          **Q.** AT THAT TIME YOU WERE UP FOR PROMOTION, WEREN'T YOU?

24          **A.** NO.

25          **Q.** YOU WEREN'T UP FOR A PROMOTION DURING THAT TIME PERIOD?



1     **A.**   NO.   I MEAN, WE ARE ALWAYS UP FOR PROMOTION BUT NOT UNTIL  
2     THEY OPEN UP A JOB.   I APPLIED FOR THE JOB IN NOVEMBER,  
3     DECEMBER TIME FRAME.

4     **Q.**   MR. PEREZ WAS THE ONE WHO PROMOTED YOU, WASN'T HE?

5     **A.**   HE WAS PART OF IT, YEAH.

6     **Q.**   YOU KNEW HE WAS GOING TO BE THE ONE TO PROMOTE YOU, DIDN'T  
7     YOU?

8     **A.**   HE IS MY SUPERVISOR.

9     **Q.**   OKAY.   NOW YOU TOLD THE JURY HERE TODAY THAT YOU DIDN'T  
10    THINK THAT MS. NEWTON ACTUALLY TOOK A READING WITH THE DRAEGER  
11    TUBE?

12    **A.**   CORRECT.

13    **Q.**   YOU TOLD THE JURY THAT YOU DIDN'T THINK SHE ACTUALLY  
14    BUMPED THE PUMP?

15    **A.**   CORRECT.

16    **Q.**   BUT ON THE PERFORMANCE REVIEW YOU GAVE TO MS. NEWTON ON  
17    JULY 29TH, YOU SAID SHE WAS HONEST AND HAD INTEGRITY, DIDN'T  
18    YOU?

19    **A.**   YES.

20           **MS. SMALLETS:**   NOTHING FURTHER.

21           **THE COURT:**   ANY REDIRECT?   WITH RESPECT THOSE  
22    QUESTIONS ONLY.

23           **MR. LAFAYETTE:**   YES, YOUR HONOR.

24

25

**REDIRECT EXAMINATION**

**BY MR. LAFAYETTE:**

**Q.** WITH REGARD TO EXHIBIT 40, SIR, WHICH IS YOUR ASSESSMENT, WHY DID YOU CHECK THE BOX THAT SAYS SHE SHOULD MOVE FORWARD?

**A.** WANTED HER TO DO GOOD, DO WELL, TO CONTINUE. IF WE ARE TALKING ABOUT THE PERFORMANCE ASSESSMENT?

**Q.** YES.

**A.** YES. THERE IS ONLY TWO BOXES. THERE IS YES OR NO, AND I CAN'T REALLY PUT NO ANYWAY.

**Q.** WHY NOT?

**A.** WHAT CAN I DO IF I PUT NO? I CAN'T FIRE ANYBODY. SO IT'S KIND OF A MOOT POINT.

**Q.** OKAY. AT THE TIME YOU WERE DOING THIS WERE STILL STL -- WERE A TEMPORARY SHIFT TEAM LEADER?

**A.** TEMPORARY SHIFT TEAM LEADER.

**Q.** ARE TEMPORARY SHIFT TEAM LEADERS IN THE UNION OR OUT OF THE UNION?

**A.** THEY ARE IN THE UNION. UNLESS YOU ARE WORKING UP, IT'S KIND OF A -- YOU'RE NOT, IF YOU ARE WORKING AS A SHIFT TEAM LEADER, BUT WHEN -- IT COULD BE WORKING AS A UNION PERSON THE NEXT DAY. YOU'RE STILL PAYING DUES, CARD CARRYING MEMBER.

**MR. LAFAYETTE:** ALL RIGHT. NO FURTHER QUESTIONS, YOUR HONOR.

**THE COURT:** ANYTHING ON THAT?

**MS. SMALLETS:** NO, YOUR HONOR.

1           **THE COURT:** ALL RIGHT. YOU ARE EXCUSED. NEXT  
2 WITNESS.

3           **MR. LAFAYETTE:** YES. DEFENSE WOULD LIKE TO CALL  
4 MS. DEANNA MARTINEZ.

5           **THE COURT:** OKAY. COME ON FORWARD. YOUR CELL PHONE  
6 IS OFF?

7           **THE CLERK:** REMAIN STANDING AND RAISE YOUR RIGHT HAND  
8 PLEASE.

9           (DEANNA MARTINEZ, CALLED AS A WITNESS FOR THE DEFENDANT,  
10 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

11           **THE WITNESS:** I DO.

12           **THE CLERK:** PLEASE BE SEATED. ADJUST THE MICROPHONE.  
13 PLEASE STATE AND SPELL YOUR FULL NAME.

14           **THE WITNESS:** DEANNA MARTINEZ. D-E-A-N-N-A.

15           **THE COURT:** GOOD MORNING.

16           **THE WITNESS:** GOOD MORNING.

17           **THE COURT:** YOU MAY PROCEED.

18                           **DIRECT EXAMINATION**

19           **BY MR. LAFAYETTE:**

20           **Q.** MS. MARTINEZ, WHERE ARE YOU EMPLOYED?

21           **A.** SHELL OIL MARTINEZ.

22           **Q.** HOW LONG HAVE YOU BEEN EMPLOYED THERE?

23           **A.** AS A SHELL EMPLOYEE, SIX YEARS.

24           **Q.** AS A WHAT?

25           **A.** AS A SHELL EMPLOYEE, GOING ON SIX YEARS.

1 Q. SIX YEARS. DID YOU HAVE ANY PRIOR EXPERIENCE AT THE  
2 REFINERY?

3 A. 27 YEARS TOTAL.

4 Q. 27 YEARS?

5 A. UH-HUH.

6 Q. WHAT DID YOU DO THERE FOR 27 YEARS?

7 A. I STARTED OUT AS A HELPER FOR ABOUT A YEAR. THEN I WENT  
8 INTO MECHANICAL, AND THEN I WAS A PIPE FITTER/WELDER, AND THEN  
9 I WENT TO OPERATIONS, AND NOW I AM IN HEALTH AND SAFETY.

10 Q. WHAT DO YOU DO IN HEALTH AND SAFETY?

11 A. I'M A REFINERY SAFETY LEADER --

12 THE COURT: CAN WE INCREASE HER VOLUME, PLEASE?

13 THANK YOU.

14 GO AHEAD.

15 THE WITNESS: I AM A REFINERY SAFETY LEADER. MY JOB  
16 IS TO GO AROUND AND MAKE SURE JOBS ARE IN GOOD CONDITION, SAFE  
17 WORK ENVIRONMENTS, OVERSEE PERMITTING.

18 BY MR. LAFAYETTE:

19 Q. ALL RIGHT. SO IN 2016, WHERE WERE YOU?

20 A. OPERATIONS.

21 Q. AND WHICH PART OF OPERATIONS, DID YOU WORK IN?

22 A. OPCEN SOUTH SIDE, TEAM FOUR.

23 Q. TEAM FOUR?

24 DID YOU WORK ON THE SAME SHIFT AS MS. NEWTON?

25 A. I DID.

1 Q. WHICH PART OF THE OPCEN DID YOU WORK IN?

2 A. THE SOUTH SIDE.

3 Q. AND WHILE YOU WERE THERE, DID YOU HAVE AN OPPORTUNITY TO  
4 OBSERVE MS. NEWTON WORKING?

5 A. I DID.

6 Q. AND DID YOU HAVE AN OPPORTUNITY TO OBSERVE MS. NEWTON  
7 ENGAGING WITH OTHER MEMBERS OF THE CREW?

8 A. I DID.

9 Q. TELL ME WHAT YOU OBSERVED ABOUT MS. NEWTON WORKING.

10 A. I -- I KNOW SHE WAS -- FEARED THE JOB A FEW TIMES. THERE  
11 WAS A COUPLE OF TIMES THAT WE HAD -- YOU KNOW, YOU HAD UPSET  
12 WHICH IS NORMAL. WE HAVE TO GO INTO THE UNIT AND ASSESS  
13 THINGS AND SHE -- I FELT SHE WAS UNCOMFORTABLE DOING THAT.

14 Q. WHY DO YOU THINK THAT? WHY DO YOU SAY THAT?

15 A. I MEAN, I WOULD -- IN THE BATHROOM I WOULD SEE HER UPSET.  
16 AND I WOULD TRY TO SEE WHAT WAS GOING ON BUT I THINK SHE WAS  
17 AFRAID.

18 Q. SO LET ME ASK YOU SOMETHING. LAST NIGHT, WHAT WERE YOU  
19 DOING LAST NIGHT?

20 A. I WAS WORKING.

21 Q. WHAT SHIFT DID YOU WORK YESTERDAY?

22 A. NIGHT SHIFT.

23 Q. FROM WHEN TO WHEN?

24 MS. SMALLETS: OBJECTION, RELEVANCE.

25 THE COURT: OVERRULED. I WILL GIVE HIM A LITTLE BIT

1 OF LATITUDE.

2 **THE WITNESS:** I WENT IN AT 5:00 AND I GOT OFF AT  
3 11:00.

4 **BY MR. LAFAYETTE:**

5 **Q.** GOT OFF AT 11:00?

6 **A.** UH-HUH.

7 **Q.** P.M.?

8 **A.** CORRECT.

9 **Q.** SO NOW WHEN WE ARE TALKING ABOUT HER WORKING, COULD YOU  
10 OBSERVE WHETHER OR NOT PEOPLE WERE ASSISTING HER?

11 **A.** YES. CAMERON WAS MY STL AND I HAVE ANOTHER COWORKER,  
12 DONOVAN, WHO WOULD GIVE THE SHIRT OFF HIS BACK TO HELP PEOPLE,  
13 BUT CAMERON WAS OUT THERE ALL THE TIME HELPING HER.

14 **Q.** DID YOU OBSERVE OTHER MEMBERS OF THE TEAM HELPING HER?

15 **A.** YES. JOHN HESS, DONOVAN FRANCES. A LOT OF PEOPLE WERE  
16 HELPING. DIFFERENT PROCEDURES. WE ROTATE JOBS. THERE IS  
17 FOUR JOBS, AND ONE WOULD WORK ONE JOB. AND SO IT WOULD ALL  
18 DEPEND ON WHO WAS AVAILABLE TO HELP.

19 **Q.** OKAY. DID YOU OBSERVE ANYTHING THAT YOU THOUGHT WAS  
20 PECULIAR INVOLVING MS. NEWTON?

21 **A.** THERE WAS ONE TIME THAT I HAD -- I WENT INTO THE LAB AND  
22 SHE WAS ON HER PHONE AND SHE PUT IT IN HER POCKET. AND I SEEN  
23 HER GRAB THE SAMPLE CONTAINER AND GO OUTSIDE. AND IT'S A  
24 LIFE-SAVING RULE, NO CELL PHONES. YOU GET TERMINATED FOR  
25 GETTING CAUGHT WITH IT. SO I WANTED TO HELP HER OUT.

1 I PULLED HER INTO THE CONFERENCE ROOM AND TALKED TO HER.  
2 IT SEEMED SHE WAS STRUGGLING. I TOLD HER MY EXPERIENCE WHEN I  
3 GOT HIRED, THAT EVERYONE HAS A DIFFERENT WAY OF LEARNING AND,  
4 YOU KNOW, MAINTAINING THEIR TRAINING. AND IF YOU DON'T HAVE  
5 IT WITH THIS TEAM, YOU CAN GO TO OTHER TEAMS. JUST TALK TO  
6 YOUR SUPERVISOR AND SAY, LOOK, I NEED MORE HELP BECAUSE I HAD  
7 DO IT AND THEY ARE MORE THAN WILLING TO HELP YOU. AND THEN  
8 THE CELL PHONE THING, SHE HAD TOLD ME OTHER PEOPLE ARE DOING  
9 IT TOO.

10 Q. SHE TOLD YOU WHAT?

11 A. THAT OTHER PEOPLE HAD THEIR CELLS PHONES IN THE UNIT AND I  
12 CAN'T SAY THAT THAT IS TRUE. I DON'T KNOW. I DIDN'T SEE IT.  
13 BUT AS A PERSON ON PROBATION, IT'S THE LAST THING YOU SHOULD  
14 BE DOING BECAUSE WE AREN'T EVEN SUPPOSED TO BE USING OUR CELL  
15 PHONES ON PROBATION. SO I WAS JUST LOOKING OUT FOR HER AND  
16 TRYING TO HELP HER AND TELL HER, YOU KNOW, IT CAN GET YOU IN  
17 TROUBLE.

18 Q. WHAT DID YOU TELL HER?

19 A. THAT BEING ON PROBATION, YOU KNOW, IT'S LIKE A TRIAL JOB.  
20 THINGS THAT YOU DO NOW, IT IS NOT GOING TO GUARANTEE YOUR  
21 EMPLOYMENT. AND BEING ON YOUR CELL PHONE AND NOT GETTING THE  
22 TRAINING THAT YOU NEED IS NOT GOING TO BE IN YOUR BENEFIT.

23 Q. OKAY. NOW, DID YOU EVER OBSERVE HER CRYING AT THE  
24 REFINERY?

25 A. YES.

1 Q. PLEASE EXPLAIN.

2 A. I WENT INTO THE RESTROOM AND SHE WAS UPSET. I ASKED HER  
3 WHY. SHE TOLD ME ABOUT AN INCIDENT WITH THE ACID OUTSIDE. AT  
4 THAT TIME I WAS TRAINING IN HEALTH AND SAFETY SO I KNEW A  
5 LITTLE BIT ABOUT IT.

6 AND I WENT TO CAMERON AND I TALKED TO HIM. I SAID, YOU  
7 KNOW, SHE IS UPSET ABOUT THIS, CAN YOU GIVE ME A LITTLE BIT  
8 MORE INFORMATION. HE SAID I TRIED TO EXPLAIN TO HER, I SHOWED  
9 HER THAT IT'S SPENT, IT IS NOT HAZARDOUS, I HAVE DONE  
10 EVERYTHING. I DON'T KNOW WHAT ELSE TO TELL HER. HE WAS -- HE  
11 DOESN'T GET FRUSTRATED AT ALL. HE JUST DIDN'T -- HE DIDN'T  
12 KNOW WHAT ELSE TO DO.

13 Q. SO WHAT HAPPENED AFTER THAT?

14 A. I KNOW THAT HE HAD TALKED TO HER. I DON'T KNOW ALL THE  
15 DETAILS BUT I -- SHE WAS CLEARLY UPSET AND I WENT TO HIM AND  
16 TOLD HIM.

17 Q. ALL RIGHT. NOW HAD YOU SEEN HER IN THE BATHROOM BEFORE  
18 THIS?

19 A. YES. ON NIGHT SHIFTS SHE SPENT A LOT OF TIME IN THERE.  
20 MAYBE SHE WAS UNCOMFORTABLE WITH BEING OUT WITH OTHER PEOPLE.  
21 BUT I WOULD WALK IN THERE AND SHE -- I DON'T KNOW IF SHE WAS  
22 EATING HER LUNCH IN THERE OR WHAT. I THOUGHT IT WAS KIND OF  
23 PECULIAR SPENDING THAT MUCH TIME IN THE RESTROOM.

24 Q. ALL RIGHT. DID YOU EVER SEE ANYBODY SET ANY TRAPS FOR  
25 HER?



1       **A.**   NO.

2       **Q.**   DID YOU EVER SEE ANYBODY TRY AND SET UP ANYTHING SO SHE  
3       WOULD MAKE A MISTAKE?

4       **A.**   NO.   MAKING A MISTAKE DOESN'T JUST AFFECT HER, IT AFFECTS  
5       EVERYBODY.   NO ONE WOULD WANT TO DO THAT.   ONE UNIT AFFECTS  
6       THE OTHER UNIT.   IF HER UNIT IS UPSET, ALL OUR UNITS ARE UPSET  
7       TOO.

8               **MR. LAFAYETTE:**   NO FURTHER QUESTIONS, YOUR HONOR.

9               **THE COURT:**   CROSS.

10                               **CROSS-EXAMINATION**

11       **BY MR. ETTINGHOFF:**

12       **Q.**   GOOD MORNING.

13       **A.**   GOOD MORNING.

14       **Q.**   DO YOU HAVE FAMILY MEMBERS AT SHELL?

15       **A.**   CORRECT.

16       **Q.**   THAT WORK AT SHELL?

17       **A.**   YES.

18       **Q.**   AND WHO ARE THEY?

19       **A.**   MY BROTHER, MIKA, WORKS IN MAINTENANCE AND MY SON WORKED  
20       ACROSS THE STREET AT THE CATALYST PLANT.

21       **Q.**   WHEN YOU WORKED WITH MS. NEWTON, DID YOU WORK ON THE SOUTH  
22       SIDE; IS THAT WHAT YOU SAID?

23       **A.**   SOUTH SIDE.

24       **Q.**   MS. NEWTON WORKED AT THE NORTH SIDE, CORRECT?

25       **A.**   CORRECT.   BUT WE WERE RIGHT THERE TOGETHER.

1 Q. WOULD YOU SAY YOU WORKED SIDE-BY-SIDE BY HER EVER?

2 A. ON THE JOB, NO. BUT WE -- OUR DESKS SOMETIMES WERE BUTTED  
3 UP TOGETHER LIKE HERE AND HERE (INDICATING). WE INTERACTED --

4 Q. YOU DID NOT WORK SIDE BY SIDE, CORRECT?

5 A. IN THE UNIT, NO.

6 Q. AND YOU SAID THAT YOU OBSERVED HER IN THE BATHROOM?

7 A. CORRECT.

8 Q. SO EVERY TIME THAT YOU WENT TO THE BATHROOM, CIARA NEWTON  
9 WAS IN THE BATHROOM AS WELL?

10 A. I WOULDN'T EVEN HAVE TO GO INTO THE BATHROOM. I WOULD  
11 WALK BY THE HALLWAY COMING IN AND I WOULD SEE HER GO INTO THE  
12 RESTROOM.

13 Q. NOW AFTER YOU REPORTED THIS, THE FACT THAT CIARA WAS  
14 CRYING IN THE BATHROOM TO CAMERON, YOU GOT A PROMOTION AT  
15 SHELL, DIDN'T YOU?

16 A. NOT RIGHT AFTER, NO.

17 Q. DID YOU GET AN PROMOTION AT SHELL AFTER THAT?

18 A. ABOUT A YEAR LATER.

19 MR. ETTINGHOFF: NO FURTHER QUESTIONS.

20 THE COURT: ANYTHING ON THOSE QUESTIONS?

21 **REDIRECT EXAMINATION**

22 **BY MR. LAFAYETTE:**

23 Q. DO YOU KNOW WHY YOU GOT PROMOTED?

24 A. I TRAINED FOR THAT JOB FOR TWO YEARS. A YEAR PRIOR TO  
25 THIS WHOLE INCIDENT, I WAS IN TRAINING FOR THIS JOB.

1           **MR. LAFAYETTE:** NO FURTHER QUESTIONS, YOUR HONOR.

2           **THE COURT:** ANYTHING ON THAT QUESTION?

3           **MR. ETTINGHOFF:** NO.

4           **THE COURT:** ALL RIGHT. YOU MAY STEP DOWN,

5 MS. MARTINEZ.

6           **MR. LAFAYETTE:** THE DEFENSE RESTS, YOUR HONOR.

7           **THE COURT:** ALL RIGHT. ALL RIGHT, THE DEFENSE RESTS.  
8 ANY REBUTTAL CASE?

9           **MS. SMALLETS:** YOUR HONOR, CAN WE HAVE A COUPLE OF  
10 MINUTES?

11           **THE COURT:** CLOCK IS TICKING. YES.

12                               (PAUSE IN THE PROCEEDINGS.)

13           **MS. SMALLETS:** YES. WE WOULD LIKE TO CALL  
14 MS. NEWTON.

15           **THE COURT:** ALL RIGHT.

16                               **DIRECT EXAMINATION**

17 **BY MS. SMALLETS:**

18 **Q.** GOOD MORNING, MS. NEWTON.

19 **A.** GOOD MORNING.

20           **THE COURT:** HOLD ON. MS. NEWTON, YOU ARE STILL UNDER  
21 OATH.

22           **THE WITNESS:** OKAY.

23           **THE COURT:** OKAY. NOW YOU MAY PROCEED.

24 **BY MS. SMALLETS:**

25 **Q.** THE JURY JUST SAW MS. DEANNA MARTINEZ TESTIFY. I HAVE

1 JUST A FEW QUESTIONS FOR YOU ABOUT THAT.

2 DID YOU AND MS. MARTINEZ WORK TOGETHER?

3 **A.** SHE WAS IN OPCEN NORTH AND SHE WAS COMING FROM TURNAROUND  
4 SO OUR SCHEDULES OVERLAPPED FOR ABOUT THREE WEEKS DURING THAT  
5 PERIOD OF TIME. WE NEVER ACTUALLY WORKED TOGETHER BUT WE DID  
6 SHARE THE SAME OFFICE.

7 **Q.** DID YOU ENCOUNTER MS. MARTINEZ IN THE BATHROOM?

8 **A.** OF COURSE. WE CHANGED OUR UNIFORMS IN THERE. BUT I NEVER  
9 ENCOUNTERED HER CRYING EVER.

10 **Q.** HOW FREQUENTLY DID YOU ENCOUNTER HER IN THE BATHROOM?

11 **A.** WELL, WHEN SHE WAS THERE FOR THOSE THREE WEEKS, WE CHANGE  
12 UNIFORMS IN THERE SO DEFINITELY MORE THAN A FEW TIMES.

13 **Q.** I SEE. WERE YOU CHANGING UNIFORMS AT THE SAME TIME?

14 **A.** WHEN WE WERE ON THE SAME SHIFT, WE STARTED AT THE SAME  
15 TIME AND FINISHED AT THE SAME TIME.

16 **Q.** WHEN SHE WAS ON THE SHIFT, WAS SHE WORKING IN THE SAME  
17 AREA YOU WERE WORKING?

18 **A.** NO, SO WHEN WE SAY WORKING, WE MEET OUT IN THE FIELD  
19 ACTUALLY DOING THE HANDS-ON THINGS. NO.

20 WHEN WE HAVE OUR DOWNTIME AND WE ARE AT OUR DESKS, WE WERE  
21 IN THE SAME AREA.

22 **Q.** DID YOU EVER CRY IN FRONT OF MS. MARTINEZ?

23 **A.** NO.

24 **Q.** DID MS. MARTINEZ EVER OFFER YOU ANY ADVICE?

25 **A.** NOT THAT I REMEMBER.

1           **MS. SMALLETS:**   NOTHING FURTHER, YOUR HONOR.

2           **THE COURT:**   ANYTHING ON THOSE QUESTIONS,  
3   MR. LAFAYETTE?

4           **MR. LAFAYETTE:**   NO, YOUR HONOR.

5           **THE COURT:**   OKAY.   NOW YOU'RE EXCUSED.

6           **THE COURT:**   ANY OTHER WITNESSES?

7           **MS. SMALLETS:**   NO, YOUR HONOR.

8           **THE COURT:**   PLAINTIFF RESTS?

9           **MS. SMALLETS:**   YES, YOUR HONOR.

10          **THE COURT:**   ALL RIGHT.

11               LADIES AND GENTLEMEN, THEN THAT CONCLUDES THE EVIDENTIARY  
12   PORTION OF THE TRIAL.   WE ARE GOING TO GO AHEAD AND TAKE OUR  
13   BREAK.

14               WHEN YOU COME BACK OUT, I WILL START WITH THE LEGAL  
15   INSTRUCTIONS AND THEN YOU'LL HEAR CLOSING ARGUMENTS AFTER  
16   THAT.   OKAY?   SO LET'S GO AHEAD AND TAKE A 15-MINUTE BREAK.

17               I THINK WE HAVE THE LAST SET OF PICTURES TO GIVE YOU FOR  
18   YOUR BINDER.   MR. MERRY WILL GIVE THOSE TO YOU AND I WILL SEE  
19   YOU BACK HERE IN ABOUT 15 MINUTES.

20               (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

21               **THE COURT:**   OKAY.   THE RECORD WILL REFLECT THE JURY  
22   HAS LEFT.   EXCELLENT.   ON SCHEDULE.   ANYTHING TO BE SAID?   OR  
23   I'LL GIVE YOU TIME.

24               **MR. LAFAYETTE:**   NO, YOUR HONOR.

25               **MS. SMALLETS:**   NO, YOUR HONOR.

1           **THE COURT:**   OKAY.   15 MINUTES, AND THEN WE WILL START  
2 WITH INSTRUCTIONS.

3           (RECESS TAKEN AT 9:50 A.M.; RESUMED AT 10:03 A.M.)

4           **THE COURT:**   EVERYBODY READY?

5           **MR. LAFAYETTE:**   YES, YOUR HONOR.

6           **MS. NUGENT:**   YES, YOUR HONOR.

7           **THE COURT:**   OKAY.   SO I'M GOING TO HAVE THIS QUESTION  
8 COPIED FOR YOU AND YOU CAN ANSWER THEIR QUESTION IN THEIR  
9 ARGUMENTS.   THERE IS NO -- THE EVIDENCE IS IN.   BUT IT JUST  
10 SAYS:

11           ON SHELL PERFORMANCE REVIEW, IF ONE MEANS NO AND FIVE  
12 MEANS YES, WHAT DO TWO, THREE, AND FOUR MEAN PRECISELY?  
13 SPECIFICALLY THIS IS IN REGARDS TO METCALF'S RANKINGS OF  
14 NEWTON IN THE EMAIL FROM PEREZ WHERE PEREZ POSTED THE  
15 RANKINGS, DATED SEPTEMBER 21ST, 2016.

16           SO THINK ABOUT THAT.   YOU MIGHT WANT TO PUT THOSE IN YOUR  
17 CLOSINGS.   THERE IS NO MORE EVIDENCE, BUT I WILL GIVE YOU  
18 COPIES -- WAIT.   SORRY.

19           CAN YOU STAMP THIS AS RECEIVED?   AND WE'LL GIVE YOU  
20 COPIES.

21           **THE COURT:**   OKAY.   NOW LET'S CALL THE JURORS IN.

22           (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

23           **THE COURT:**   OKAY.   WE ARE BACK ON THE RECORD.   THE  
24 RECORD WILL REFLECT THE JURY IS HERE.   YOU MAY BE SEATED.

25           SO I HAVE SHARED YOUR QUESTION THAT WE RECEIVED WITH THE

1       LAWYERS AND I EXPECT THEY'LL ROLL THOSE INTO THEIR ARGUMENTS.  
2       WE ARE NOT TAKING ANY MORE EVIDENCE SO THEY WILL ANSWER IT THE  
3       WAY THEY WILL ANSWER IT.

4           OKAY. YOU HAVE A NEW BINDER ON YOUR CHAIRS. YOU CAN  
5       LISTEN, READ ALONG, DO WHATEVER YOU WANT. THESE INSTRUCTIONS  
6       GET COMPLICATED SO I MAKE SURE TO HAVE A WRITTEN VERSION WHICH  
7       YOU CAN TAKE IN WITH YOU. I FIND THAT SOME JURORS LEARN  
8       BETTER BY LISTENING, SOME BY READING, SOME BY A COMBINATION,  
9       SO THAT IS WHY I HAVE COPIES FOR YOU BUT YOU ARE WELCOME TO  
10      JUST LISTEN OR READ ALONG. IT'S UP TO YOU.

11          MEMBERS OF THE JURY, YOU HAVE NOW HEARD ALL THE EVIDENCE.  
12      THE ATTORNEYS WILL HAVE ONE LAST CHANCE TO TALK TO YOU IN  
13      CLOSING ARGUMENT. BEFORE THEY DO, IT IS MY DUTY TO INSTRUCT  
14      YOU ON THE LAW THAT APPLIES TO THIS CASE. YOU MUST FOLLOW  
15      THESE INSTRUCTIONS AS WELL AS THOSE THAT I PREVIOUSLY GAVE  
16      YOU. EACH OF YOU HAS RECEIVED A COPY OF THESE INSTRUCTIONS  
17      THAT YOU MAY TAKE WITH YOU TO THE JURY ROOM TO CONSULT DURING  
18      YOUR DELIBERATIONS.

19          IT IS YOUR DUTY TO FIND THE FACTS FROM ALL THE EVIDENCE IN  
20      THIS CASE. TO THOSE FACTS YOU WILL APPLY THE LAW AS I GIVE IT  
21      TO YOU. YOU MUST FOLLOW THE LAW AS I GIVE IT TO YOU WHETHER  
22      YOU AGREE WITH IT OR NOT. AND YOU MUST NOT BE INFLUENCED BY  
23      ANY PERSONAL LIKES OR DISLIKES, OPINIONS, PREJUDICES, OR  
24      SYMPATHY. THAT MEANS YOU MUST DECIDE THE CASE SOLELY ON THE  
25      EVIDENCE BEFORE YOU. AND YOU WILL RECALL THAT YOU TOOK AN

1 OATH TO DO SO.

2 PLEASE DO NOT READ INTO THESE INSTRUCTIONS OR ANYTHING  
3 THAT I MAY SAY OR DO OR HAVE SAID OR HAVE DONE THAT I HAVE AN  
4 OPINION REGARDING THE EVIDENCE OR WHAT YOUR VERDICT SHOULD BE.

5 AS YOU HAVE BEEN PREVIOUSLY INSTRUCTED, PLAINTIFF IS CIARA  
6 NEWTON. DEFENDANT IS EQUILON ENTERPRISES, LLC. DEFENDANT  
7 DOES BUSINESS AS SHELL OIL PRODUCTS U.S.

8 EQUILON ENTERPRISES IS ENTITLED TO THE SAME FAIR AND  
9 IMPARTIAL TREATMENT THAT YOU WOULD GIVE TO AN INDIVIDUAL. YOU  
10 MUST DECIDE THIS CASE WITH THE SAME FAIRNESS THAT YOU WOULD IF  
11 YOU WERE DECIDING THE CASE BETWEEN INDIVIDUALS. WHEN I USE  
12 WORDS LIKE PERSON OR HE OR SHE IN THESE INSTRUCTIONS TO REFER  
13 TO A PARTY, THOSE INSTRUCTIONS ALSO APPLY TO EQUILON  
14 ENTERPRISES, LLC.

15 THE PLAINTIFF BRINGS FIVE CLAIMS: ONE, HARASSMENT BASED  
16 ON GENDER; TWO, DISCRIMINATION BASED ON GENDER; THREE,  
17 RETALIATION FOR REPORTING HARASSMENT OR DISCRIMINATION; FOUR,  
18 FAILURE TO TAKE REASONABLE STEPS TO PREVENT DISCRIMINATION,  
19 HARASSMENT, OR RETALIATION; AND LAST, RETALIATION FOR  
20 DISCLOSING INFORMATION SHE BELIEVED TO BE A LEGAL VIOLATION  
21 RELATED TO AN ACID SPILL.

22 THE PLAINTIFF HAS THE BURDEN OF PROVING THESE CLAIMS.

23 THE DEFENDANT DENIES ALL OF THE CLAIMS. IT ALSO CONTENDS  
24 THAT PLAINTIFF FAILED TO REASONABLY AVAIL HERSELF OF  
25 DEFENDANT'S INTERNAL COMPLAINT PROCESS WHILE EMPLOYED, THAT



1 SHE HAS FAILED TO TAKE REASONABLE STEPS TO MINIMIZE HER  
2 DAMAGES AFTER TERMINATION AND THAT, IN ALL EVENTS, DEFENDANT'S  
3 DISCHARGE OF PLAINTIFF WAS FOR UNSATISFACTORY JOB PERFORMANCE  
4 WHICH IS A LAWFUL REASON FOR DISCHARGE. THE PLAINTIFF DENIES  
5 THESE AFFIRMATIVE DEFENSES.

6 PLAINTIFF MUST PROVE HER CLAIMS BY A PREPONDERANCE OF THE  
7 EVIDENCE. DEFENDANT HAS THE BURDEN OF PROVING CERTAIN  
8 AFFIRMATIVE DEFENSES BY A PREPONDERANCE OF THE EVIDENCE AS  
9 WELL. TO THE EXTENT A DIFFERENT STANDARD APPLIES, I WILL  
10 EXPLAIN THAT LATER.

11 WHEN A PARTY HAS THE BURDEN OF PROVING ANY CLAIM BY A  
12 PREPONDERANCE OF THE EVIDENCE, IT MEANS THAT YOU MUST BE  
13 PERSUADED BY THE EVIDENCE THAT THE CLAIM IS MORE PROBABLY TRUE  
14 THAN NOT. YOU SHOULD BASE YOUR DECISION ON ALL OF THE  
15 EVIDENCE REGARDLESS OF WHICH PARTY PRESENTED IT.

16 THE EVIDENCE YOU ARE TO CONSIDER IN DECIDING THESE FACTS  
17 IS, REMEMBER, NOW, MY PUZZLE BOX IS FULL. WE STARTED WITH  
18 NOTHING, SO WHAT DID WE PUT IN THAT BOX? THE SWORN TESTIMONY  
19 OF ALL THE WITNESSES, THE EXHIBITS THAT WERE ADMITTED INTO  
20 EVIDENCE, ANY FACTS TO WHICH THE LAWYERS HAVE AGREED, AND ANY  
21 FACTS THAT I HAVE INSTRUCTED YOU TO ACCEPT AS PROVED.

22 THE PARTIES HAVE AGREED TO CERTAIN FACTS THAT I WILL READ  
23 TO YOU AND YOU MUST, THEREFORE, TREAT THESE FACTS AS HAVING  
24 BEEN PROVED: ONE, PLAINTIFF CIARA NEWTON WAS EMPLOYED AT  
25 DEFENDANT'S REFINERY IN MARTINEZ FROM JANUARY 4TH, 2016 TO

1 SEPTEMBER 29TH, 2016.

2 TWO, IN FEBRUARY 2016, CIARA NEWTON WAS ASSIGNED TO THE  
3 OPCEN, OPERATIONS CENTRAL DEPARTMENT, AND THREE, DEFENDANT  
4 TERMINATED CIARA NEWTON'S EMPLOYMENT ON SEPTEMBER 29, 2016.

5 NOW THERE ARE CERTAIN THINGS THAT ARE NOT EVIDENCE, AND  
6 YOU MAY NOT CONSIDER THEM IN DECIDING WHAT THE FACTS ARE. I  
7 WILL LIST THEM FOR YOU.

8 ARGUMENTS AND STATEMENTS BY LAWYERS ARE NOT EVIDENCE. THE  
9 LAWYERS ARE NOT WITNESSES. WHAT THEY HAVE SAID IN THEIR  
10 OPENING STATEMENTS, CLOSING ARGUMENTS, AND AT ALL OTHER TIMES  
11 IS INTENDED TO HELP YOU INTERPRET THE EVIDENCE; BUT IT IS NOT  
12 EVIDENCE. IF THE FACTS AS YOU REMEMBER THEM DIFFER FROM THE  
13 WAY THE LAWYERS HAVE STATED THEM, YOUR MEMORY OF THEM  
14 CONTROLS.

15 QUESTIONS AND OBJECTIONS BY THE LAWYERS ARE NOT EVIDENCE.  
16 ATTORNEYS HAVE A DUTY TO THEIR CLIENTS TO OBJECT WHEN THEY  
17 BELIEVE A QUESTION IS IMPROPER UNDER THE RULES OF EVIDENCE.  
18 YOU SHOULD NOT BE INFLUENCED BY THE OBJECTION OR THE COURT'S  
19 RULING ON IT.

20 THREE, TESTIMONY THAT WAS STRICKEN OR EXCLUDED OR THAT YOU  
21 HAVE BEEN INSTRUCTED TO DISREGARD IS NOT EVIDENCE AND MUST NOT  
22 BE CONSIDERED. IN ADDITION, SOME EVIDENCE WAS RECEIVED ONLY  
23 FOR A LIMITED PURPOSE. WHEN I INSTRUCTED YOU TO CONSIDER  
24 CERTAIN EVIDENCE ONLY FOR A LIMITED PURPOSE, YOU MUST DO SO  
25 AND NOT CONSIDER THAT EVIDENCE FOR ANY OTHER PURPOSE.

1           FOUR, ANYTHING YOU MAY HAVE SEEN OR HEARD WHEN THE COURT  
2           WAS NOT IN SESSION IS NOT EVIDENCE. YOU ARE TO DECIDE THE  
3           CASE SOLELY ON THE EVIDENCE RECEIVED AT THE TRIAL.

4           EVIDENCE MAY BE DIRECT OR CIRCUMSTANTIAL. DIRECT EVIDENCE  
5           IS DIRECT PROOF OF A FACT, SUCH AS TESTIMONY BY A WITNESS  
6           ABOUT WHAT THAT WITNESS PERSONALLY SAW OR DID OR HEARD.  
7           CIRCUMSTANTIAL EVIDENCE IS PROOF OF ONE OR MORE FACTS FROM  
8           WHICH YOU COULD FIND SOME OTHER FACT. YOU SHOULD CONSIDER  
9           BOTH KINDS OF EVIDENCE. AND THE LAW MAKES NO DISTINCTION  
10          BETWEEN THE WEIGHT TO BE GIVEN TO EITHER DIRECT OR  
11          CIRCUMSTANTIAL. IT IS UP TO YOU TO DECIDE HOW MUCH WEIGHT TO  
12          GIVE ANY EVIDENCE.

13          I'LL GIVE YOU THIS EXAMPLE AGAIN. MAYBE IT MAKES MORE  
14          SENSE NOW THAT YOU HAVE BEEN IN TRIAL. IF YOU WAKE UP IN THE  
15          MORNING AND YOU SEE THAT THE SIDEWALK IS WET, YOU MAY FIND  
16          FROM THAT FACT, THAT IS YOU MAY DECIDE, RIGHT, FROM THAT FACT  
17          THAT IT RAINED DURING THE NIGHT. HOWEVER, OTHER EVIDENCE,  
18          MIGHT EXIST SUCH AS A TURNED ON GARDEN HOSE AND THAT MAY  
19          PROVIDE A DIFFERENT EXPLANATION FOR THE PRESENCE OF WATER ON  
20          THE SIDEWALK. THEREFORE, BEFORE YOU DECIDE THAT SOME FACT HAS  
21          BEEN PROVED BY CIRCUMSTANTIAL EVIDENCE, YOU MUST CONSIDER ALL  
22          THE EVIDENCE IN THE IN LIGHT OF REASON, EXPERIENCE, AND COMMON  
23          SENSE.

24          YOU MAY CONSIDER THE ABILITY OF EACH PERSON TO PROVIDE  
25          EVIDENCE. IF A PARTY PROVIDED WEAKER EVIDENCE WHEN IT COULD

1 HAVE PROVIDED STRONGER EVIDENCE, YOU MAY DISTRUST THE WEAKER  
2 EVIDENCE.

3 IF A PARTY FAILED TO EXPLAIN OR DENY EVIDENCE AGAINST HER  
4 OR IT WHEN SHE OR IT COULD REASONABLY HAVE BEEN EXPECTED TO  
5 HAVE DONE SO ON WHAT SHE OR IT KNEW, YOU MAY CONSIDER HER OR  
6 ITS FAILURE TO EXPLAIN OR DENY IN EVALUATING THE EVIDENCE.

7 IT IS UP TO YOU TO DECIDE THE MEANING AND IMPORTANCE OF  
8 THE FAILURE TO EXPLAIN OR DENY EVIDENCE AGAINST THE PARTY.

9 THERE ARE RULES OF EVIDENCE THAT CONTROL WHAT CAN BE RECEIVED  
10 INTO EVIDENCE. AND WHEN A LAWYER ASKED A QUESTION OR OFFERED  
11 AN EXHIBIT INTO EVIDENCE AND THE LAWYER FROM THE OTHER SIDE  
12 THOUGHT IT WAS NOT PERMITTED BY THE RULES OF EVIDENCE, THAT  
13 LAWYER OBJECTED. IF I OVERRULED THE OBJECTION, THE QUESTION  
14 WAS ANSWERED AND THE EXHIBIT WAS RECEIVED INTO EVIDENCE. IF I  
15 SUSTAINED THE OBJECTION, THE QUESTION WAS NOT ANSWERED AND THE  
16 EXHIBIT WAS NOT RECEIVED INTO EVIDENCE. WHENEVER I SUSTAINED  
17 AN OBJECTION TO A QUESTION, YOU MUST IGNORE THAT QUESTION AND  
18 NOT GUESS WHAT THE ANSWER MIGHT HAVE BEEN.

19 DURING TRIAL I ORDERED THAT EVIDENCE BE STRICKEN FROM THE  
20 RECORD AND THAT YOU DISREGARD IT. THAT MEANS WHEN YOU ARE  
21 DECIDING THE CASE, YOU MUST NOT CONSIDER THE STRICKEN EVIDENCE  
22 FOR ANY PURPOSE.

23 IN DECIDING THE FACTS IN THIS CASE, YOU MAY HAVE TO DECIDE  
24 WHICH TESTIMONY TO BELIEVE AND WHAT TESTIMONY NOT TO BELIEVE.  
25 YOU MAY BELIEVE EVERYTHING A WITNESS SAYS OR PART OF IT OR

1 NONE OF IT.

2 IN CONSIDERING THE TESTIMONY OF ANY WITNESS, YOU MAY TAKE  
3 INTO ACCOUNT THE FOLLOWING. ONE, THE OPPORTUNITY AND THE  
4 ABILITY OF THE WITNESS TO SEE OR HEAR OR KNOW THE THINGS  
5 TESTIFIED TO; TWO, THE WITNESS'S MEMORY; THREE, THE WITNESS'S  
6 MANNER WHILE TESTIFYING; FOUR, THE WITNESS'S INTEREST IN THE  
7 OUTCOME OF THE CASE, IF ANY; FIVE, THE WITNESS'S BIAS OR  
8 PREJUDICE, IF ANY; SIX, WHETHER OTHER EVIDENCE CONTRADICTED  
9 THE WITNESS'S TESTIMONY; SEVEN, THE REASONABLENESS OF THE  
10 WITNESS'S TESTIMONY IN LIGHT OF ALL OF THE EVIDENCE; AND  
11 EIGHT, ANY OTHER FACTORS THAT BEAR ON BELIEVABILITY.

12 SOMETIMES A WITNESS MAY SAY SOMETHING THAT IS NOT  
13 CONSISTENT WITH SOMETHING ELSE HE OR SHE SAID. SOMETIMES  
14 DIFFERENT WITNESSES WILL GIVE DIFFERENT VERSIONS OF WHAT  
15 HAPPENED. PEOPLE OFTEN FORGET THINGS AND MAKE MISTAKES IN  
16 WHAT THEY REMEMBER. ALSO TWO PEOPLE MAY SEE THE SAME EVENT  
17 BUT REMEMBER IT DIFFERENTLY. YOU MAY CONSIDER THESE  
18 DIFFERENCES BUT DO NOT DECIDE THAT TESTIMONY IS UNTRUE JUST  
19 BECAUSE IT DIFFERS FROM OTHER TESTIMONY.

20 HOWEVER, IF YOU DECIDE THAT A WITNESS HAS DELIBERATELY  
21 TESTIFIED UNTRUTHFULLY ABOUT SOMETHING IMPORTANT, YOU MAY  
22 CHOOSE NOT TO BELIEVE ANYTHING THAT WITNESS SAID. ON THE  
23 OTHER HAND, IF YOU THINK THE WITNESS TESTIFIED UNTRUTHFULLY  
24 ABOUT SOME THINGS BUT TOLD THE TRUTH ABOUT OTHERS, YOU MAY  
25 ACCEPT THE PART YOU THINK IS TRUE AND IGNORE THE REST.

1 THE WEIGHT OF THE EVIDENCE AS TO A FACT DOES NOT  
2 NECESSARILY DEPEND ON THE NUMBER OF WITNESSES WHO TESTIFY.  
3 WHAT IS IMPORTANT IS HOW BELIEVABLE THE WITNESS'S WERE, AND  
4 HOW MUCH WEIGHT YOU THINK THEIR TESTIMONY DESERVES.

5 YOU HEARD DEPOSITION TESTIMONY. A DEPOSITION IS THE SWORN  
6 TESTIMONY OF A WITNESS TAKEN BEFORE TRIAL. THE WITNESS IS  
7 PLACED UNDER OATH TO TELL THE TRUTH AND LAWYERS FOR EACH PARTY  
8 MAY ASK QUESTIONS. THE QUESTIONS AND ANSWERS ARE RECORDED.  
9 YOU HEARD EVIDENCE THAT ONE OR MORE WITNESSES MADE A DIFFERENT  
10 STATEMENT UNDER OATH ON THAT PRIOR OCCASION. THIS EVIDENCE  
11 MAY BE CONSIDERED ALONG WITH ALL THE OTHER EVIDENCE IN  
12 DECIDING WHETHER OR NOT TO BELIEVE THE WITNESS AND HOW MUCH  
13 WEIGHT TO GIVE TO THE TESTIMONY OF THE WITNESS AND FOR NO  
14 OTHER PURPOSE.

15 YOU HAVE HEARD TESTIMONY FROM NORA OSTROFE, WHO TESTIFIED  
16 TO OPINIONS AND THE REASONS FOR THEIR OPINIONS. THIS OPINION  
17 TESTIMONY IS ALLOWED BECAUSE OF THE EDUCATION OR EXPERIENCE OF  
18 THESE WITNESSES. SUCH OPINION TESTIMONY SHOULD BE JUDGED LIKE  
19 ANY OTHER TESTIMONY. YOU MAY ACCEPT IT OR REJECT IT AND MAY  
20 GIVE IT AS MUCH WEIGHT AS YOU THINK IT DESERVES, CONSIDERING  
21 THE WITNESS'S EDUCATION AND EXPERIENCE, THE REASONS GIVEN FOR  
22 THE OPINION, AND ALL THE OTHER EVIDENCE IN THE CASE.

23 YOU MUST NOT CONSIDER WHETHER ANY OF THE PARTIES IN THIS  
24 CASE HAS INSURANCE. THE PRESENCE OR ABSENCE OF INSURANCE IS  
25 TOTALLY IRRELEVANT. YOU MUST DECIDE THIS CASE BASED ONLY ON

1 THE LAW AND THE EVIDENCE.

2 PLAINTIFF CIARA NEWTON BRINGS FIVE CLAIMS AGAINST  
3 DEFENDANT EQUILON ENTERPRISES, LLC, DOING BUSINESS AS SHELL  
4 OIL PRODUCTS U.S.

5 THE FIRST CLAIM, HARASSMENT BASED UPON GENDER IN VIOLATION  
6 OF CALIFORNIA'S FAIR EMPLOYMENT AND HOUSING ACT, ALSO KNOWN  
7 FEHA.

8 SECOND CLAIM, GENDER DISCRIMINATION IN VIOLATION OF FEHA.  
9 THIRD CLAIM RETALIATION IN VIOLATION OF FEHA. FOURTH CLAIM,  
10 FAILURE TO PREVENT HARASSMENT AND DISCRIMINATION IN VIOLATION  
11 OF FEHA, AND THE FIFTH CLAIM, RETALIATION FOR DISCLOSING  
12 INFORMATION SHE BELIEVED TO BE A LEGAL VIOLATION SOMETIMES  
13 CALLED WHISTLEBLOWER RETALIATION IN VIOLATION OF THE  
14 CALIFORNIA LABOR CODE.

15 I WILL EXPLAIN EACH IN TURN. PRELIMINARILY, IN  
16 CALIFORNIA, EMPLOYMENT IS PRESUMED TO BE AT WILL. THAT MEANS  
17 THAT AN EMPLOYER MAY DISCHARGE AN EMPLOYEE FOR NO REASON, OR  
18 FOR A GOOD, BAD, MISTAKEN, UNWISE, OR EVEN UNFAIR REASON, AS  
19 LONG AS ITS ACTION IS NOT FOR A DISCRIMINATORY OR RETALIATORY  
20 REASON.

21 SO THE FIRST CLAIM, CIARA NEWTON CLAIMS THAT SHE WAS  
22 SUBJECTED TO GENDER BASED HARASSMENT CAUSING A HOSTILE OR  
23 ABUSIVE WORK ENVIRONMENT WHILE EMPLOYED BY DEFENDANT EQUILON  
24 ENTERPRISES. TO ESTABLISH THIS CLAIM, CIARA NEWTON MUST PROVE  
25 ALL OF THE FOLLOWING: ONE, THAT CIARA NEWTON WAS AN EMPLOYEE

1 OF THE DEFENDANT; TWO, CIARA NEWTON WAS SUBJECTED TO UNWANTED  
2 HARASSING CONDUCT BECAUSE SHE WAS A WOMAN; THREE, THAT THE  
3 HARASSING CONDUCT WAS SEVERE OR PERVASIVE; FOUR, THAT A  
4 REASONABLE PERSON IN CIARA NEWTON'S CIRCUMSTANCES WOULD HAVE  
5 CONSIDERED THE WORK ENVIRONMENT TO BE HOSTILE OR ABUSIVE;  
6 FIVE, THAT CIARA NEWTON CONSIDERED THE WORK ENVIRONMENT TO BE  
7 HOSTILE OR ABUSIVE; SIX, THAT A SUPERVISOR ENGAGED IN THE  
8 HARASSING CONDUCT, OR THAT A SUPERVISOR OR AGENT OF THE  
9 DEFENDANT KNEW OR SHOULD HAVE KNOWN OF THE HARASSING CONDUCT  
10 AND FAILED TO TAKE IMMEDIATE, APPROPRIATE -- IMMEDIATE AND  
11 APPROPRIATE CORRECTIVE ACTION; SEVEN, THAT CIARA NEWTON WAS  
12 HARMED; AND EIGHT, THAT THE CONDUCT WAS A SUBSTANTIAL FACTOR  
13 IN CAUSING CIARA NEWTON'S HARM.

14 AS USED ABOVE THE FOLLOWING DEFINITIONS APPLY: SO THAT  
15 YOU UNDERSTAND THE STRUCTURE, THERE ARE THOSE EIGHT ELEMENTS  
16 AND NOW I'M GOING TO GIVE YOU SOME DEFINITIONS, OKAY?  
17 HARASSING CONDUCT MEANS CONDUCT OUTSIDE THE SCOPE OF NECESSARY  
18 JOB PERFORMANCE ENGAGED IN FOR REASONS OF PERSONAL  
19 GRATIFICATION, MEANNESS, BIGOTRY, HOSTILITY, OR OTHER PERSONAL  
20 MOTIVES. HARASSING CONDUCT MAY INCLUDE, BUT IS NOT LIMITED  
21 TO, ANY OF THE FOLLOWING: A, VERBAL HARASSMENT, SUCH AS  
22 OBSCENE, DEMEANING, DEROGATORY OR INTIMIDATING LANGUAGE; B,  
23 VISUAL HARASSMENT, SUCH AS AN OFFENSIVE POSTERS, OBJECTS,  
24 CARTOONS OR DRAWINGS; OR C, OTHER HOSTILE OR ABUSIVE SOCIAL  
25 INTERACTIONS.



1           NEXT, SEVERE OR PERVASIVE CONDUCT MEANS CONDUCT THAT  
2       ALTERS THE CONDITIONS OF EMPLOYMENT AND CREATES A HOSTILE OR  
3       ABUSIVE WORK ENVIRONMENT. IN DETERMINING WHETHER THE CONDUCT  
4       WAS SEVERE OR PERVASIVE, YOU SHOULD CONSIDER ALL OF THE  
5       CIRCUMSTANCES AND YOU MAY CONSIDER ALL OR ANY OF THE  
6       FOLLOWING: A, THE NATURE OF THE CONDUCT; B, HOW OFTEN, AND  
7       OVER WHAT TIME PERIOD THE CONDUCT OCCURRED; C, THE  
8       CIRCUMSTANCES UNDER WHICH THE CONDUCT OCCURRED; D, WHETHER THE  
9       CONDUCT WAS PHYSICALLY THREATENING OR HUMILIATING; AND/OR E,  
10      THE EXTENT TO WHICH THE CONDUCT UNREASONABLY INTERFERED WITH  
11      AN EMPLOYEE'S WORK PERFORMANCE. AN EMPLOYEE IS CONSIDERED A  
12      SUPERVISOR OF THE DEFENDANT IF THAT EMPLOYEE HAD ANY OF THE  
13      FOLLOWING: A, THE AUTHORITY TO HIRE, TRANSFER, PROMOTE,  
14      ASSIGN, REWARD, DISCIPLINE, OR DISCHARGE CIARA NEWTON OR TO  
15      EFFECTIVELY RECOMMEND ANY OF THESE ACTIONS; OR B, THE  
16      RESPONSIBILITY TO ACT ON CIARA NEWTON'S GRIEVANCES OR TO  
17      EFFECTIVELY RECOMMEND ACTION ON GRIEVANCES; OR C, THE  
18      RESPONSIBILITY TO DIRECT CIARA NEWTON'S DAILY WORK ACTIVITIES.  
19      A SUPERVISOR'S EXERCISE OF AUTHORITY OR RESPONSIBILITY MUST  
20      NOT MERELY BE ROUTINE OR CLERICAL AND MUST REQUIRE THE USE OF  
21      INDEPENDENT JUDGMENT.

22           NEXT, A SUBSTANTIAL FACTOR IN CAUSING HARM IS A FACTOR  
23      THAT A REASONABLE PERSON WOULD CONSIDER TO HAVE CONTRIBUTED TO  
24      THE HARM. IT MUST BE MORE THAN A REMOTE OR TRIVIAL FACTOR.  
25      IT DOES NOT HAVE TO BE THE ONLY CAUSE OF HARM.

1 WITH RESPECT TO THE FIRST CLAIM OF HARASSMENT BASED ON  
2 GENDER, THE PARTIES DISAGREE ABOUT WHAT EVIDENCE YOU CAN  
3 CONSIDER. THE PARTIES AGREE THAT CIARA NEWTON FILED A CHARGE  
4 ABOUT HARASSMENT ON THE BASIS OF GENDER WITH THE DEPARTMENT OF  
5 FAIR EMPLOYMENT AND HOUSING, THAT'S DFEH, ON MAY 24, 2017. A  
6 CHARGE IS TIMELY IF IT IS MADE WITHIN ONE YEAR OF THE LATEST  
7 DATE ON WHICH THE ALLEGED HARASSING CONDUCT OCCURRED.

8 BECAUSE CIARA NEWTON FILED HER CHARGE ON MAY 24TH, 2017,  
9 DEFENDANT ARGUES THAT YOU MUST NOT CONSIDER ANY ALLEGED  
10 HARASSING CONDUCT THAT OCCURRED BEFORE MAY 24TH, 2016 IN  
11 DECIDING THIS CLAIM. CIARA NEWTON DISAGREES AND ARGUES THAT  
12 YOU MAY CONSIDER EVIDENCE OF AN ALLEGED HARASSING CONDUCT THAT  
13 OCCURRED BEFORE MAY 24, 2016, BECAUSE IT WAS PART OF A  
14 CONTINUING VIOLATION.

15 A CONTINUING VIOLATION EXISTS IF CIARA NEWTON PROVES THAT  
16 ALL OF THE FOLLOWING THREE CONDITIONS ARE TRUE: ONE, THAT THE  
17 HARASSING CONDUCT THAT OCCURRED AFTER MAY 24TH WAS SIMILAR OR  
18 RELATED TO THE HARASSING CONDUCT THAT OCCURRED BEFORE  
19 MAY 24TH, 2016; NEXT, THAT THE HARASSING CONDUCT WAS  
20 REASONABLY FREQUENT; AND LAST, THAT THE HARASSING CONDUCT HAD  
21 NOT BECOME PERMANENT.

22 FOR PURPOSES OF THIS INSTRUCTION, PERMANENT MEANS THAT THE  
23 HARASSING CONDUCT HAD STOPPED OR CIARA NEWTON HAD BEEN  
24 REASSIGNED OR BEEN DISCHARGED BY THAT TIME, OR DEFENDANT'S  
25 STATEMENTS AND ACTIONS WOULD MAKE IT CLEAR TO A REASONABLE

1 EMPLOYEE THAT ANY FURTHER EFFORTS TO RESOLVE THE HARASSING  
2 CONDUCT INTERNALLY WOULD BE FUTILE.

3 IF YOU FIND EVIDENCE OF EVENTS PRIOR TO MAY 24, 2016, THAT  
4 THEY CONSTITUTED A CONTINUING VIOLATION AS DEFINED HERE IN,  
5 YOU MAY CONSIDER THE EVIDENCE IN EVALUATING THIS CLAIM. IF  
6 NOT, YOU MAY NOT. SO IT IS USUALLY ABOUT HERE THAT JURORS ARE  
7 GLAD I HAVE THIS IN WRITING. I DON'T KNOW HOW ANYBODY WOULD  
8 EXPECT YOU TO MEMORIZE THIS STUFF.

9 OKAY. THAT'S THE FIRST CLAIM. HERE IS THE -- THAT IS  
10 ACTUALLY THE LONGEST, THEY GET SHORTER. HERE IS THE SECOND  
11 CLAIM.

12 DISCRIMINATION BASED ON GENDER. CIARA NEWTON CLAIMS THAT  
13 DEFENDANT EQUILON ENTERPRISES WRONGFULLY DISCRIMINATED AGAINST  
14 HER BASED ON HER GENDER. TO ESTABLISH THIS CLAIM, CIARA  
15 NEWTON MUST PROVE ALL OF THE FOLLOWING: ONE, THAT THE  
16 DEFENDANT WAS AN EMPLOYER; TWO, THAT CIARA NEWTON WAS OTHER  
17 EMPLOYEE OF THE DEFENDANT; THREE, THE DEFENDANT DISCHARGED  
18 CIARA NEWTON; FOUR, THAT CIARA NEWTON'S GENDER WAS A  
19 SUBSTANTIAL, MOTIVATING REASON FOR DEFENDANT'S DECISION TO  
20 TERMINATE HER; FIVE, THAT CIARA NEWTON WAS HARMED; AND SIX  
21 THAT DEFENDANT'S CONDUCT WAS A SUBSTANTIAL FACTOR IN CAUSING  
22 CIARA NEWTON'S HARM.

23 A SUBSTANTIAL FACTOR IN CAUSING HARM IS A FACTOR THAT A  
24 REASONABLE PERSON WOULD CONSIDER TO HAVE CONTRIBUTED TO THE  
25 HARM. IT MUST BE MORE THAN A REMOTE OR TRIVIAL FACTOR. IT

1 DOES NOT HAVE TO BE THE ONLY CAUSE OF HARM.

2 IF YOU FIND CIARA NEWTON HAS PROVED EACH ELEMENT, YOUR  
3 VERDICT SHOULD BE IN FAVOR OF CIARA NEWTON ON THIS CLAIM. IF  
4 YOU FIND SHE HAS NOT, YOUR VERDICT SHOULD BE FOR THE DEFENDANT  
5 ON THIS CLAIM. THIRD CLAIM, FEHA RETALIATION.

6 CIARA NEWTON CLAIMS THAT DEFENDANT EQUILON ENTERPRISES,  
7 DOING BUSINESS AS SHELL OIL PRODUCTS, RETALIATED AGAINST HER  
8 FOR COMPLAINING ABOUT DISCRIMINATION OR HARASSMENT. TO  
9 ESTABLISH THIS CLAIM, CIARA NEWTON MUST PROVE ALL OF THE  
10 FOLLOWING: ONE, THAT CIARA NEWTON COMPLAINED ABOUT  
11 DISCRIMINATION OR HARASSMENT; TWO, THAT DEFENDANT DISCHARGED  
12 CIARA NEWTON; THREE, THAT CIARA NEWTON'S COMPLAINT OF  
13 DISCRIMINATION OR HARASSMENT WAS A SUBSTANTIAL, MOTIVATING  
14 REASON FOR DEFENDANT'S DECISION TO DISCHARGE HER; FOUR, THAT  
15 CIARA NEWTON WAS HARMED; AND, FIVE, THAT DEFENDANT'S DECISION  
16 TO DISCHARGE CIARA NEWTON WAS A SUBSTANTIAL FACTOR IN CAUSING  
17 HER HARM.

18 A SUBSTANTIAL FACTOR IN CAUSING HARM IS A FACTOR THAT A  
19 REASONABLE PERSON WOULD CONSIDER TO HAVE CONTRIBUTED TO THE  
20 HARM. IT MUST BE MORE THAN A REMOTE OR TRIVIAL FACTOR. IT  
21 DOES NOT HAVE TO BE THE ONLY CAUSE OF THE HARM.

22 CIARA NEWTON DOES NOT HAVE TO PROVE DISCRIMINATION OR  
23 HARASSMENT IN ORDER TO BE PROTECTED FROM RETALIATION. SHE  
24 ONLY NEEDS TO SHOW THAT A, SHE REASONABLY BELIEVED THAT THE  
25 CONDUCT ABOUT WHICH SHE COMPLAINED WAS GENDER DISCRIMINATION

1 OR HARASSMENT BASED ON GENDER, AND B, THAT DEFENDANT HAD  
2 REASONABLE CAUSE TO BELIEVE THAT CIARA NEWTON WAS COMPLAINING  
3 OF GENDER DISCRIMINATION OR HARASSMENT ON THE BASIS OF GENDER.

4 IN MAKING HER COMPLAINT, CIARA NEWTON NEED NOT USE OR DID  
5 NOT NEED TO USE THE WORDS QUOTE "GENDER DISCRIMINATION" OR  
6 QUOTE "SEX DISCRIMINATION" OR QUOTE "SEXUAL HARASSMENT", OR  
7 QUOTE "HARASSMENT", OR QUOTE "HOSTILE WORK ENVIRONMENT".

8 IF YOU FIND CIARA NEWTON HAS PROVED EACH ELEMENT ABOVE,  
9 YOUR VERDICT SHOULD BE IN FAVOR OF HER ON THIS CLAIM. IF YOU  
10 FIND THAT SHE HAS NOT, YOUR VERDICT SHOULD BE FOR THE  
11 DEFENDANT ON THIS CLAIM.

12 NOW WITH RESPECT TO THE INSTRUCTIONS FOR THE SECOND AND  
13 THIRD CLAIMS, THERE IS A TERM, A SUBSTANTIAL, MOTIVATING  
14 REASON. THAT TERM LIKE A SUBSTANTIAL FACTOR MEANS A REASON  
15 THAT ACTUALLY CONTRIBUTED TO CIARA NEWTON'S TERMINATION. IT  
16 MUST BE MORE THAN A REMOTE OR TRIVIAL REASON. IT DOES NOT  
17 HAVE TO BE THE ONLY REASON MOTIVATING THE TERMINATION.

18 EVEN IF THE PERSON OR PERSONS WHO MADE THE ULTIMATE  
19 DECISION TO TERMINATE CIARA NEWTON DID NOT HOLD ANY  
20 DISCRIMINATORY OR RETALIATORY INTENT, YOU MAY FIND THAT GENDER  
21 DISCRIMINATION OR RETALIATION WAS A SUBSTANTIAL, MOTIVATING  
22 REASON FOR DEFENDANT EQUILON ENTERPRISES', DOING BUSINESS AS  
23 SHELL OIL PRODUCTS, DECISION TO TERMINATE CIARA NEWTON IF SHE  
24 PROVES A, A GENDER DISCRIMINATION OR RETALIATION WAS A  
25 SUBSTANTIAL, MOTIVATING REASON FOR HER -- FOR RECOMMENDING HER

1 TERMINATION OR PROVIDING INFORMATION SUPPORTING HER  
2 TERMINATION AND B, THE RECOMMENDATION OR INFORMATION ACTUALLY  
3 CONTRIBUTED TO THE DECISION TO TERMINATE HER.

4 THE LACK OF AN INVESTIGATION MAY BE CONSIDERED EVIDENCE  
5 THAT CIARA NEWTON'S GENDER WAS A SUBSTANTIAL MOTIVATING REASON  
6 FOR DEFENDANT'S DECISION TO TERMINATE HER.

7 FOURTH CLAIM. THE FAILURE TO PREVENT -- STRIKE THAT.  
8 CIARA NEWTON CLAIMS THAT DEFENDANT EQUILON ENTERPRISES, DOING  
9 BUSINESS AS SHELL OIL PRODUCTS, FAILED TO TAKE ALL REASONABLE  
10 STEPS TO PREVENT GENDER BASED DISCRIMINATION, DISCRIMINATION  
11 BASED ON HER GENDER OR RETALIATION.

12 TO ESTABLISH THIS CLAIM, CIARA NEWTON MUST PROVE ALL OF  
13 THE FOLLOWING: ONE, THAT SHE WAS AN EMPLOYEE OF THE  
14 DEFENDANT; TWO, THAT SHE WAS SUBJECTED TO HARASSMENT  
15 DISCRIMINATION, OR RETALIATION IN THE COURSE OF HER  
16 EMPLOYMENT; THREE, THAT DEFENDANT FAILED TO TAKE ALL  
17 REASONABLE STEPS TO PREVENT HARASSMENT, DISCRIMINATION, OR  
18 RETALIATION; FOUR, THAT CIARA NEWTON WAS HARMED; AND FIVE,  
19 THAT DEFENDANT'S FAILURE TO TAKE ALL REASONABLE STEPS TO  
20 PREVENT HARASSMENT, DISCRIMINATION OR RETALIATION WAS A  
21 SUBSTANTIAL FACTOR IN CAUSING CIARA NEWTON'S HARM.

22 A SUBSTANTIAL FACTOR IN CAUSING HARM IS A FACTOR THAT A  
23 REASONABLE PERSON WOULD CONSIDER TO HAVE CONTRIBUTED TO THE  
24 HARM. IT MUST BE MORE THAN A REMOTE OR TRIVIAL FACTOR. IT  
25 DOES NOT HAVE TO BE THE ONLY CAUSE OF THE HARM.

1 IF YOU FIND CIARA NEWTON IS HAS PROVED EACH ELEMENT, YOUR  
2 VERDICT SHOULD BE IN FAVOR OF PLAINTIFF CIARA NEWTON ON THIS  
3 CLAIM. IF YOU FIND SHE HAS NOT, YOUR VERDICT SHOULD BE FOR  
4 THE DEFENDANT ON THIS CLAIM. ALL RIGHT. THE LAST CLAIM,  
5 FIFTH CLAIM.

6 CIARA NEWTON CLAIMS THAT DEFENDANT EQUILON ENTERPRISES,  
7 DOING BUSINESS AS SHELL OIL PRODUCTS, DISCHARGED HER IN  
8 RETALIATION FOR HER DISCLOSURE OF INFORMATION SHE REASONABLY  
9 BELIEVED TO BE A LEGAL VIOLATION. IN ORDER TO ESTABLISH THIS  
10 CLAIM, CIARA NEWTON MUST PROVE ALL OF THE FOLLOWING: ONE, THE  
11 DEFENDANT WAS PLAINTIFF'S EMPLOYER; TWO, THAT DEFENDANT  
12 BELIEVED THAT PLAINTIFF HAD DISCLOSED TO A PERSON WITH  
13 AUTHORITY OVER HER THE FAILURE TO RESPOND TO AN ACID SPILL AT  
14 THE REFINERY; THREE, THAT CIARA NEWTON HAD REASONABLE CAUSE TO  
15 BELIEVE THAT THE INFORMATION DISCLOSED A VIOLATION OF STATE OR  
16 FEDERAL STATUTE, OR A VIOLATION OF OR NONCOMPLIANCE WITH A  
17 LOCAL STATE OR FEDERAL RULE OR REGULATION; FOUR, THAT  
18 DEFENDANT DISCHARGED CIARA NEWTON; FIVE, THAT CIARA NEWTON'S  
19 DISCLOSURE OF THAT INFORMATION WAS A CONTRIBUTING FACTOR IN  
20 DEFENDANT'S DECISION TO DISCHARGE HER; SIX, THAT CIARA NEWTON  
21 WAS HARMED; AND SEVEN, THAT THE DEFENDANT'S CONDUCT WAS A  
22 SUBSTANTIAL FACTOR IN CAUSING CIARA NEWTON'S HARM.

23 IT IS NOT CIARA NEWTON'S MOTIVATION FOR HER DISCLOSURE,  
24 BUT ONLY THE CONTENT OF THAT DISCLOSURE, THAT DETERMINES  
25 WHETHER THE DISCLOSURE IS PROTECTED. A DISCLOSURE IS

1 PROTECTED EVEN THOUGH DISCLOSING THE INFORMATION MAY BE PART  
2 OF CIARA NEWTON'S JOB DUTIES.

3 A SUBSTANTIAL FACTOR IN CAUSING HARM IS AGAIN THE SAME  
4 THING AS PREVIOUSLY INSTRUCTED. IT IS A FACTOR THAT A  
5 REASONABLE PERSON WOULD CONSIDER TO HAVE CONTRIBUTED TO THE  
6 HARM. IT MUST BE MORE THAN A REMOTE OR TRIVIAL FACTOR. IT  
7 DOES NOT HAVE TO BE THE ONLY CAUSE OF THE HARM.

8 EVEN IF CIARA NEWTON PROVES THAT HER DISCLOSURE OF AN  
9 UNLAWFUL ACT WAS A CONTRIBUTING FACTOR IN DEFENDANT'S DECISION  
10 TO TERMINATE HER, DEFENDANT IS NOT LIABLE IF IT CAN PROVE BY  
11 CLEAR AND CONVINCING EVIDENCE THAT IT WOULD HAVE DISCHARGED  
12 CIARA NEWTON ANYWAY AT THAT TIME FOR A LAWFUL, INDEPENDENT  
13 REASON.

14 PROOF BY CLEAR AND CONVINCING EVIDENCE MEANS THAT THE  
15 DEFENDANT MUST PRESENT EVIDENCE THAT LEAVES YOU WITH A FIRM  
16 BELIEF OR CONVICTION THAT IT IS HIGHLY PROBABLE THAT THE  
17 FACTUAL CONTENTIONS OF THE CLAIM OR DEFENSE ARE TRUE. THIS IS  
18 A HIGHER STANDARD THAN PROOF BY A PREPONDERANCE OF THE  
19 EVIDENCE, BUT IT IS -- DOES NOT REQUIRE PROOF BEYOND A  
20 REASONABLE DOUBT.

21 SO IF YOU FIND CIARA NEWTON HAS PROVED EACH ELEMENT, YOUR  
22 VERDICT SHOULD BE IN FAVOR OF PLAINTIFF CIARA NEWTON ON THIS  
23 CLAIM UNLESS DEFENDANT HAS PROVED BY CLEAR AND CONVINCING  
24 EVIDENCE THAT IT WOULD HAVE TERMINATED CIARA NEWTON AT THAT  
25 TIME FOR LAWFUL, INDEPENDENT REASONS. SO IF YOU FIND THE



## CLOSING ARGUMENT - SMALLETS

1 PLAINTIFF HAS NOT PROVED EACH ELEMENT OR IF YOU FIND THAT  
2 DEFENDANT HAS PROVED BY CLEAR AND CONVINCING EVIDENCE THAT IT  
3 WOULD HAVE TERMINATED HER FOR A LAWFUL, INDEPENDENT REASON,  
4 YOUR VERDICT SHOULD BE FOR DEFENDANT ON THIS CLAIM.

5 **THE COURT:** ALL RIGHT. YOU SHOULD SEE STOP IN YOUR  
6 BOOKS. I WANT YOU TO STOP -- I'M GOING TO -- I HAVE A FEW  
7 MORE INSTRUCTIONS TO HELP YOU GET STARTED. BUT AT THIS POINT,  
8 I'M GOING TO INVITE THE PARTIES TO GIVE THEIR CLOSING  
9 ARGUMENTS, AND WE CAN STAND AND STRETCH WHILE MS. SMALLETS  
10 GETS SET UP.

11 (PAUSE IN THE PROCEEDINGS.)

12 **THE COURT:** ARE YOU ALL READY?

13 **MS. SMALLETS:** I AM READY. IS MY MICROPHONE ON?

14 **THE COURT:** IT IS ON. YOU MAY PROCEED WHENEVER YOU  
15 ARE READY.

16 **CLOSING ARGUMENT**

17 **MS. SMALLETS:** YOUR HONOR, MR. LAFAYETTE, MS. LYONS,  
18 LADIES AND GENTLEMEN OF THE JURY: WE ARE HERE TODAY BECAUSE  
19 THE MEN IN THE OPCEN DEPARTMENT AT THE SHELL MARTINEZ REFINERY  
20 DIDN'T WANT ANOTHER WOMAN IN THE DEPARTMENT. AND THEY  
21 CERTAINLY DIDN'T WANT ANOTHER WOMAN WHO WAS GOING TO STAND UP  
22 FOR HERSELF AND MAKE THEM CHANGE THEIR WAYS.

23 WE KNOW HOW THEY FELT. IT WAS ON THE STICKER THAT THEY  
24 LEFT ON MS. NEWTON'S DESK, TELLING HER THAT IF YOUR PUSSY  
25 HURTS, JUST STAY HOME. THAT WAS A HARD HAT STICKER, ONE OF A

## CLOSING ARGUMENT - SMALLETS

1 STACK THAT WAS BROUGHT INTO THE REFINERY FOR THE OTHER  
2 OPERATORS TO WEAR ON THEIR HARD HATS TO ADVERTISE TO THE WORLD  
3 HOW THEY FELT ABOUT HAVING WOMEN IN OPCEN.

4 THANK YOU FOR YOUR TIME AND YOUR SERVICE ON THIS JURY. WE  
5 SAW THAT YOU HAVE BEEN TAKING NOTES AND PAYING CLOSE ATTENTION  
6 AND THAT IS VERY IMPORTANT AND WE APPRECIATE IT.

7 I'M NOT -- WE ARE NOT GOING TO HAVE AN OPPORTUNITY TO  
8 TOUCH ON EVERYTHING THAT HAPPENED HERE TODAY IN THIS CLOSING,  
9 SO PLEASE DO RELY UPON WHAT YOU SAW AND HEARD IN DECIDING THE  
10 CLAIMS.

11 THIS IS OUR -- THIS CLOSING ARGUMENT IS OUR OPPORTUNITY TO  
12 EXPLAIN TO YOU WHAT THE CLAIMS ARE AND HOW SOME OF THE  
13 TESTIMONY AND EVIDENCE YOU SAW, DOCUMENTS YOU SAW SUPPORT  
14 THOSE CLAIMS.

15 THIS IS JUST AN OVERVIEW. AS YOU HEARD, THERE'S -- YOU  
16 HEARD ALL OF THE EVIDENCE THAT SUPPORTS OUR CLAIMS. NOW,  
17 THERE ARE FIVE CLAIMS IN THIS CASE GENDER HARASSMENT, GENDER  
18 DISCRIMINATION, RETALIATION FOR HAVING REPORTED HARASSMENT AND  
19 DISCRIMINATION, FAILURE TO PREVENT HARASSMENT, DISCRIMINATION  
20 HARASSMENT OR RETALIATION FROM OCCURRING, AND RETALIATION FOR  
21 REPORTING SAFETY ISSUES AT THE REFINERY, THE SULFURIC ACID  
22 SPILL.

23 YOU HAVE BEEN GIVEN JURY INSTRUCTIONS ON ALL FIVE OF THOSE  
24 CLAIMS. NOW HERE IS WHAT YOU ARE GOING TO BE ASKED TO DECIDE  
25 HERE TODAY: THIS IS THE VERDICT FORM. IT HAS FIVE QUESTIONS,

1 ONE QUESTION FOR EACH OF THE CLAIMS.

2 THE VERDICT FORM ASKS YOU TO DECIDE WHETHER CIARA NEWTON  
3 HAS ESTABLISHED EACH OF HER CLAIMS BY A PREPONDERANCE OF THE  
4 EVIDENCE. NOW, AS YOU WEIGH THE EVIDENCE BEFORE YOU, WHAT THE  
5 PREPONDERANCE OF THE EVIDENCE MEANS IS THAT EVEN IF THERE IS  
6 JUST A FEATHER WEIGHT OF EVIDENCE, ADDITIONAL EVIDENCE IN  
7 MS. NEWTON'S FAVOR, YOU NEED TO DECIDE THAT CLAIM ON HER  
8 BEHALF. OR IF IT'S 50.001 PERCENT YOU NEED TO DECIDE THAT  
9 CLAIM ON HER BEHALF. WE BELIEVE WE HAVE SHOWN YOU MORE  
10 EVIDENCE THAN THAT, BUT THAT IS WHAT YOU ARE OBLIGATED TO DO.

11 NOW WE ARE GOING TO DESCRIBE HOW THE EVIDENCE YOU'VE SEEN  
12 IN THIS TRIAL SUPPORTS EACH OF THOSE CLAIMS, AND THEN WE WILL  
13 ASK YOU TO RETURN A VERDICT IN MS. NEWTON'S FAVOR ON ALL FIVE  
14 CLAIMS.

15 THE FIRST CLAIM YOU WILL BE ASKED TO DECIDE IS GENDER  
16 HARASSMENT. THAT CLAIM MEANS THAT MS. NEWTON WAS SUBJECTED TO  
17 A HOSTILE ENVIRONMENT AT THE MARTINEZ REFINERY BECAUSE OF HER  
18 GENDER.

19 HERE ARE THE ELEMENTS OF THAT CLAIM, THOSE ELEMENTS ARE IN  
20 THE JURY INSTRUCTIONS THAT THE JUDGE JUST READ TO YOU AND THAT  
21 YOU HAVE BEEN GIVEN COPIES OF. SOME OF THESE ARE SIMPLE.  
22 MS. NEWTON WAS AN EMPLOYEE OF THE MARTINEZ REFINERY. THAT IS  
23 NOT IN DISPUTE. BUT WE ARE GOING TO TALK ABOUT SOME OF THE  
24 OTHER ONES THAT MAY BE A LITTLE LESS CLEAR.

25 FIRST, HARASSING CONDUCT. YOU WILL SEE IN THE JURY

1 INSTRUCTIONS THE THREE TYPES OF CONDUCT THAT MS. -- WHICH  
2 MS. NEWTON EXPERIENCED, VISUAL HARASSMENT, VERBAL HARASSMENT,  
3 AND OTHER HOSTILE INTERACTIONS AND SITUATIONS. FIRST, LET'S  
4 TALK ABOUT VISUAL HARASSMENT, THE STICKER.

5 IT WAS LEFT ON MS. NEWTON'S DESK, IT WAS ONE OF THE STACK  
6 OF STICKERS BROUGHT INTO THE REFINERY AND RICHARD METCALF  
7 ADMITTED TO YOU THAT THE STICKER WAS ON SOME EMPLOYEES' HARD  
8 HATS.

9 SECOND VERBAL HARASSMENT. JEFF FISCHER TOLD MS. NEWTON  
10 THAT WOMEN DON'T MAKE IT IN OPCEN. HE TOLD MS. NEWTON THAT  
11 WOMEN DON'T LAST IN OPCEN. IF YOU DON'T HAVE JUST  
12 MS. NEWTON'S TESTIMONY ON THAT POINT, YOU HEARD JOSE NAVARRO,  
13 ONE OF THE FOUR PEOPLE IN HER TRAINING CLASS WHO IS A CURRENT  
14 EMPLOYEE OF THE REFINERY, AND HE HAD THE COURAGE TO COME IN  
15 HERE AND TELL YOU THAT HE HEARD JEFF FISCHER MAKE THOSE  
16 COMMENTS.

17 NOW HERE ARE SOME OF THE OTHER EXAMPLES OF THE VERBAL  
18 HARASSMENT THAT MS. NEWTON EXPERIENCED. THESE ARE JUST  
19 EXAMPLES REMEMBER. YOU CAN RELY UPON ANY OF THE TESTIMONY  
20 THAT YOU HEARD DURING THIS TRIAL.

21 SOME EXAMPLES. JEFF FISCHER REPEATEDLY TOLD MS. NEWTON  
22 ABOUT WALKING A FEMALE OPERATOR TO THE GATE IN TEARS. JEFF  
23 FISCHER TOLD MS. NEWTON THAT HE WOULD NOT ASSIGN HER TO A  
24 PARTICULAR TEAM BECAUSE THEY ALREADY HAD A GIRL ON THAT TEAM.  
25 IF YOU RECALL JEFF FISCHER ADMITTED MAKING THAT COMMENT AND

## CLOSING ARGUMENT - SMALLETS

1 SAID HE WAS REALLY NOT WILLING TO ASSIGN MORE THAN ONE GIRL TO  
2 EACH TEAM.

3 JEFF FISCHER TOLD MS. NEWTON THAT IT USED TO BE THE SONS  
4 OF OPERATORS WHO GOT HIRED AND HE ADMITTED SAYING THAT AS  
5 WELL. JEFF FISCHER STEREOTYPED MS. NEWTON. HE SAID SHE WAS  
6 NOT MECHANICALLY INCLINED BUT THAT'S NOT TRUE. MS. NEWTON HAD  
7 TO PASS THE SAME MECHANICAL APTITUDE TEST TO GET THE JOB AS  
8 EVERY OTHER OPERATOR AT THE REFINERY DID.

9 WHEN SHE WAS IN TRAINING UNDER JEFF FISCHER, MS. NEWTON'S  
10 PROCESS -- THE DRAWING SHE HAD DONE ON THE WHITE BOARD WAS  
11 ERASED AND THE WORDS FAIRY DUST WERE PUT ON THE WHITE BOARD  
12 INSTEAD. JEFF FISCHER ADMITTED TO YOU THAT HE KNEW ABOUT THAT  
13 BUT NO ONE DID ANYTHING ABOUT IT.

14 CAMERON CURRAN REPEATEDLY ASKED MS. NEWTON WHY SHE WANTED  
15 TO WORK AT THE REFINERY AND WHAT HER HUSBAND THOUGHT ABOUT HER  
16 WORKING AT THE REFINERY.

17 AND THEN YOU HEARD FROM MULTIPLE WITNESSES HOW OPERATORS  
18 TALKED IN STEREOTYPICAL, HIGH-PITCHED VOICES ON THE RADIO  
19 MOCKING WOMEN.

20 MS. NEWTON WAS ALSO SUBJECTED TO HOSTILE TREATMENT. A  
21 SHIFT TEAM LEAD TOLD MS. NEWTON IF YOU WANT TO BE A F-ING  
22 OPERATOR, I'M GOING TO TREAT YOU LIKE A F-ING OPERATOR. THAT  
23 WAS HER FIRST DAY IN PARALLEL TRAINING, MAY 9TH, AND HE HAD NO  
24 REASON TO TREAT HER IN THAT WAY. AND IN FACT SHE HEARD  
25 OTHER -- HIM TREAT OTHER MALE OPERATORS WITH GREATER RESPECT.

## CLOSING ARGUMENT - SMALLETS

1 DURING TRAINING, JEFF FISCHER SNAPPED HIS PAPER AT  
2 MS. NEWTON AND THREW HIS HANDS UP IN THE AIR WHEN SHE DID NOT  
3 KNOW THE ANSWER TO QUESTIONS. THAT IS NOT THE BEHAVIOR OF  
4 SOMEONE WHO WANTS TO ENCOURAGE A NEW EMPLOYEE AND GET THE BEST  
5 OUT OF THEM.

6 NOW, THAT HARASSMENT THAT I'VE DESCRIBED FOR YOU AND THAT  
7 MS. NEWTON AND THE OTHER WITNESSES TESTIFIED TO, IT WAS SEVERE  
8 OR PERVASIVE. THAT IS THE LEGAL STANDARD. IT DOESN'T NEED TO  
9 BE BOTH SEVERE AND PERVASIVE, IT NEEDS TO BE BOTH. SO THE  
10 MORE SEVERE THE INCIDENT ARE, THE FEWER. THE LESS SEVERE, THE  
11 MORE PERVASIVE. WE BELIEVE WE HAVE SHOWN BOTH SEVERITY AND  
12 PERVASIVENESS OF THE INCIDENTS.

13 HERE ARE THE FACTORS YOU CAN CONSIDER IN DECIDING WHETHER  
14 THE HARASSMENTS WERE SEVERE OR PERVASIVE. THE CONDUCT, IT WAS  
15 OFFENSIVE AND DEMEANING. MS. NEWTON TOLD YOU HOW IT MADE HER  
16 FEEL AND IT HOW MADE HER FEEL UNWELCOMED AT THE REFINERY AND  
17 LIKE A LESSER PERSON. IT TOOK PLACE THROUGHOUT HER EMPLOYMENT  
18 FROM THE TIME SHE STARTED REPORTING TO JEFF FISCHER ALL THE  
19 WAY THROUGH HER TRAINING UNTIL THE STICKER WAS PUT ON HER DESK  
20 ON AUGUST 29TH. AND THEN RICHARD METCALF ASKED HER IF SHE WAS  
21 EASILY OFFENDED WHEN TALKING TO HER ABOUT THE STICKER.

22 CONDUCT TOOK PLACE WHEN SHE WAS ONE OF VERY FEW WOMEN  
23 PRESENT IN A MALE-DOMINATED ENVIRONMENT AT THE REFINERY. THAT  
24 IS INTIMIDATING TO BE ONE OF FEWER OR THE ONLY WOMAN THERE.

25 WAS THE CONDUCT HUMILIATING? ABSOLUTELY. IT CONVEYED THE

1 MESSAGE THAT WOMEN DON'T BELONG.

2 AND, FINALLY, DID THE CONDUCT INTERFERE WITH HER JOB  
3 PERFORMANCE? YES. YOU KNOW THAT FROM RICHARD METCALF. HE  
4 SAID SHE SEEMED TIMID, BASED ON HOW SHE HAD BEEN TREATED, AND  
5 THEN REALIZED THAT IT WAS NOT A LACK OF KNOWLEDGE BUT A LACK  
6 OF CONFIDENCE AND THAT LACK OF CONFIDENCE CAME FROM HER  
7 EXPERIENCES AT THE REFINERY.

8 NOW, SHELL IS LIABLE FOR THE HARASSMENT WE'VE DESCRIBED  
9 EITHER IF IT -- IF A SUPERVISOR ENGAGED IN ACTS OF HARASSMENT  
10 OR IF SHELL KNEW ABOUT THE HARASSMENT AND DIDN'T TAKE STEPS TO  
11 STOP IT. IN THIS CASE WE HAVE BOTH. JEFF FISCHER WAS  
12 MS. NEWTON'S SUPERVISOR. HE ADMITTED IT. HE ENGAGED IN  
13 HARASSING CONDUCT. SHELL IS STRICTLY LIABLE FOR THAT  
14 HARASSMENT.

15 IAN CHAMBERLAIN, WHO MADE THE COMMENT ABOUT MS. NEWTON  
16 BEING A F-ING OPERATOR, HE WAS A SHIFT TEAM LEAD, A  
17 SUPERVISOR. SHELL IS STRICTLY LIABLE FOR THAT CONDUCT. BUT  
18 THE CONDUCT THAT HER COWORKERS ENGAGED IN, SHELL IS LIABLE FOR  
19 THAT IF IT KNEW ABOUT IT AND FAILED TO TAKE CORRECTIVE ACTION.

20 AND SHELL DID KNOW ABOUT IT. MS. NEWTON REPORTED HER  
21 CONCERNS IN MARCH, IN APRIL, IN MAY, IN JULY, MULTIPLE TIMES  
22 IN AUGUST, AND MULTIPLE TIMES IN SEPTEMBER. SHE CALLED ERIC  
23 PEREZ ON HIS PERSONAL CELL PHONE, SHE MET WITH ERIC PEREZ IN  
24 PERSON, SHE MET WITH CHRISTINE LAYNE IN, HR AND SHE REPORTED  
25 THE HARASSMENT IN WRITING. SHELL KNEW ABOUT IT.

## CLOSING ARGUMENT - SMALLETS

1 MS. NEWTON WAS HARASSED BECAUSE OF HER GENDER. SHE HAS  
2 ESTABLISHED THIS CLAIM.

3 THE SECOND CLAIM THAT WE HAVE IS FOR GENDER  
4 DISCRIMINATION. THAT IS ALSO PRETTY SIMPLE. IT MEANS  
5 MS. NEWTON WAS FIRED BECAUSE OF HER GENDER. HERE YOU CAN SEE  
6 AGAIN THE ELEMENTS OF THIS CLAIM THAT THE -- THAT ARE IN THE  
7 JURY INSTRUCTIONS. THERE ARE SEVERAL ELEMENTS HERE THAT  
8 REPEAT THROUGHOUT THE INSTRUCTIONS AND ARE NOT IN DISPUTE.  
9 SHELL WAS MS. NEWTON'S EMPLOYER AND MS. NEWTON WAS SHELL'S  
10 EMPLOYEE. SHELL FIRED MS. NEWTON AND MS. NEWTON WAS HARMED BY  
11 THAT TERMINATION. SHE LOST A JOB THAT SHE WORKED HARD FOR AND  
12 THAT REPRESENTED THE OPPORTUNITY OF A LIFETIME FOR HER.

13 SHE WAS ALSO HARMED EMOTIONALLY BY WHAT HAPPENED AT THE  
14 REFINERY. SHELL'S CONDUCT, FIRING MS. NEWTON, CAUSED THAT  
15 HARM.

16 SO THE KEY ELEMENT TO FOCUS ON IS THAT MS. NEWTON'S GENDER  
17 WAS A SUBSTANTIAL, MOTIVATING REASON FOR SHELL'S DECISION TO  
18 FIRE MS. NEWTON.

19 AS THE JURY INSTRUCTIONS TELL YOU, A SUBSTANTIAL,  
20 MOTIVATING REASON IS A REASON THAT ACTUALLY CONTRIBUTED TO  
21 MS. NEWTON'S TERMINATION. IT MUST BE MORE THAN REMOTE OR  
22 TRIVIAL BUT IT DOES NOT HAVE TO BE THE ONLY REASON.

23 MS. NEWTON ALSO DOES NOT HAVE TO PROVE THAT THE ULTIMATE  
24 DECISION-MAKER WAS MOTIVATED BY GENDER BIAS. SHE NEEDS TO  
25 PROVE THAT THE INDIVIDUALS WHO PROVIDED INFORMATION THAT WAS



## CLOSING ARGUMENT - SMALLETS

1 RELIED UPON IN MAKING THE TERMINATION DECISION, PEOPLE LIKE  
2 JEFF FISCHER WHO TESTIFIED ABOUT THE CONVERSATIONS HE HAD WITH  
3 ERIC PEREZ, OR CAMERON CURRAN WHO PROVIDED INFORMATION WERE  
4 MOTIVATED BY GENDER BIAS, OR THAT PEOPLE WHO MADE THE  
5 RECOMMENDATION, ERIC PEREZ, CHRISTINE LAYNE WERE MOTIVATED BY  
6 GENDER BIAS.

7 IF THE DECISION-MAKERS, MIKE BECK AND THE PEOPLE WHO SHELL  
8 TOLD YOU ULTIMATELY RATIFIED, APPROVED THE DECISION UP THE  
9 MANAGEMENT CHAIN, IF THEY ARE RELYING ON INFORMATION THAT WAS  
10 MOTIVATED BY GENDER BIAS, SHELL'S RESPONSIBLE FOR THAT, THEIR  
11 CONDUCT.

12 NOW, LET'S TALK ABOUT THE EVIDENCE THAT SHOWS THAT SHELL  
13 WAS MOTIVATED BY GENDER BIAS.

14 FIRST OF ALL, JEFF FISCHER'S STATEMENTS MAKE CLEAR HOW THE  
15 OPCEN DEPARTMENT FELT ABOUT HAVING WOMEN THERE. HE SAID,  
16 WOMEN DON'T MAKE IT, WOMEN DON'T LAST.

17 NOW, BUT USUALLY AN EMPLOYER DOESN'T COME OUT AND ADMIT  
18 THEY'RE GOING TO DISCRIMINATE AGAINST SOMEONE LIKE A VILLAIN  
19 IN A TV CARTOON MIGHT DO. SO INSTEAD YOU HAVE TO FIGURE THAT  
20 OUT, YOU HAVE TO INFER IT FROM THE CIRCUMSTANCES AND ALL OF  
21 THE FACTS. AND ALL THOSE FACTS AND CIRCUMSTANCES DEMONSTRATE,  
22 SHOW, THAT MS. NEWTON'S GENDER WAS A SUBSTANTIAL MOTIVATING  
23 REASON IN THE DECISION TO TERMINATE HER.

24 LET'S TAKE A LOOK AT IT. FIRST, WE KNOW THAT MS. NEWTON  
25 WAS CAPABLE OF DOING THIS JOB. SHE DID WELL ON HER FINAL

## CLOSING ARGUMENT - SMALLETS

1 EXAM. YOU CAN SEE HERE. IT'S EXHIBIT TEN. SHE SCORED IT  
2 96 PERCENT COMING OUT OF THE TRAINING PERIOD WITH JEFF  
3 FISCHER, AND SHE DID WELL ON HER WALK-THROUGH. THAT IS  
4 EXHIBIT 12. SHE GOT 292 QUESTIONS RIGHT OUT OF 296 QUESTIONS.  
5 THAT SHOWS SOMEONE WHO IS CAPABLE OF DOING THE JOB.

6 NOW, SECOND, WE KNOW THAT EVERY SINGLE PROGRESS REVIEW  
7 THAT WAS PLACED IN MS. NEWTON'S PERSONNEL FILE GIVEN TO HER BY  
8 EACH AND EVERY MANAGER WHOM SHE REPORTED TO HAD A YES CHECK IN  
9 THE BOX SHOULD THIS EMPLOYEE CONTINUE AS AN EQUILON EMPLOYEE.  
10 EVERY SINGLE ONE. TAKE A LOOK AT THE PERSONNEL FILE. IT IS  
11 EXHIBIT 70A. YOU CAN SEE THE PERFORMANCE REVIEWS IN THAT  
12 PERSONNEL FILE.

13 NOW YOU'VE HEARD TESTIMONY THAT RICHARD METCALF ULTIMATELY  
14 PREPARED A PERFORMANCE REVIEW IN WHICH HE CHECKED THE BOXES  
15 THAT BOTH SAID YES AND NO, BUT THAT IS NOT THE REVIEW IN THE  
16 PERSONNEL FILE. AND YOU ALSO HEARD RICHARD METCALF TELL YOU  
17 THAT HE MET WITH MIKE BECK AND ERIC PEREZ AND THEY PRESSURED  
18 HIM TO CHANGE THE REVIEW AND THEY TOLD HIM THEY COULDN'T FIRE  
19 MS. NEWTON IF JUST THE YES BOX WAS CHECKED. WHAT THAT TELLS  
20 YOU, WHAT YOU CAN INFER IS THAT RICHARD METCALF THOUGHT THAT  
21 MS. NEWTON WAS DOING A GOOD JOB. AND SHE TOLD YOU THAT,  
22 BECAUSE THAT'S WHAT HE TOLD HER. HE TOLD HER SHE WAS A GOOD  
23 OPERATOR.

24 OTHER EXAMPLES OF DISCRIMINATION. JEFF FISCHER, HE WHITED  
25 OUT THE SAME SIGNATURES ON MS. NEWTON'S PARALLEL TRAINING

1 CHECKLIST THAT WAS ALLOWED TO REMAIN ON THE PARALLEL CHECKLIST  
2 OF HER FELLOW MALE EMPLOYEES.

3 LET'S TALK ABOUT TERMINATIONS. WHILE MIKE BECK AND ERIC  
4 PEREZ WERE THE ONES IN CHARGE OF OPCEN, ONLY TWO EMPLOYEES  
5 WERE TERMINATED FROM THAT DEPARTMENT. ONE, A MAN WHO ENGAGED  
6 IN CREDIT CARD FRAUD, HE WAS STEALING FROM THE COMPANY AND  
7 MS. NEWTON.

8 TWO, LET'S TALK ABOUT -- LET'S TALK ABOUT HOW MS. NEWTON  
9 WAS TREATED DIFFERENTLY THAN OTHER EMPLOYEES. YOU SAW, THERE  
10 ARE EMAIL WHERE ERIC PEREZ SPECIFICALLY COMPARED HOW THE  
11 COMPANY WAS TREATING MS. NEWTON TO HOW THEY WERE TREATING  
12 ANOTHER OPERATOR, JOHN HESS. YOU CAN SEE THOSE EMAILS. IT IS  
13 EXHIBIT 26. IT IS EXHIBIT 31. ERIC PEREZ SAYS WE ARE  
14 TREATING THEM THE SAME.

15 WELL, LET'S TALK ABOUT WHAT JOHN HESS DID. CAMERON CURRAN  
16 TOLD YOU THAT. JOHN HESS ISSUED A PERMIT HE SHOULD NOT HAVE  
17 ISSUED. JOHN HESS OPENED THE WRONG VALVE AND THAT WAS NOT  
18 WASH WATER. THE VALVE THAT HE OPENED CAUSED A SIGNIFICANT  
19 UPSET, WHICH MEANS THAT PART OF THE UNIT -- ONE OF THE UNITS  
20 IN THE PLANT WAS NO LONGER FUNCTIONING BECAUSE OF THE WRONG  
21 VALVE THAT HE OPENED. JOHN HESS ALSO FAILED TO PROPERLY  
22 SECURE A PIECE OF EQUIPMENT AND THAT CAUSED A UNIT SHUTDOWN.  
23 THAT MEANS THE ENTIRE UNIT IS SHUT DOWN. DESPITE THIS JOHN  
24 HESS STILL WORKS AT THAT REFINERY AND MS. NEWTON DOES NOT.

25 LET'S TALK ABOUT SOME OTHER PIECES OF EVIDENCE YOU HAVE.

1 LOOK AT SHELL'S FAILURE TO INVESTIGATE. WE STILL DON'T KNOW  
2 WHO BROUGHT THAT STICKER INTO THE REFINERY. NOT TAKING  
3 COMPLAINTS OF DISCRIMINATION AND HARASSMENT SERIOUSLY, NOT  
4 RESPONDING APPROPRIATELY, THAT SHOWS A COMPANY IS PUTTING ITS  
5 HEAD IN THE SAND AND IT IS EVIDENCE OF DISCRIMINATORY INTENT.  
6 YOU CAN -- ALL THE HARASSMENT THAT MS. NEWTON EXPERIENCED,  
7 THAT ALSO SHOWS THE DISCRIMINATION THAT SHE WAS FACING.

8 AND, FINALLY, LOOK AT WHAT HAPPENED TO MS. NEWTON'S NEW  
9 HIRE CLASS. YOU HEARD 18 MEN, EVERY SINGLE ONE OF THEM PASSED  
10 PROBATION. FOUR WOMEN, HALF OF THEM WERE FIRED.

11 NOW, FROM DOING THIS CASE FROM SHELL YOU'VE HEARD A LOT  
12 ABOUT TARDIES AND YOU'VE HEARD A LOT ABOUT SAFETY. LET'S TALK  
13 ABOUT THAT A LITTLE BIT. FIRST THE TARDIES.

14 WHILE IT'S VERY CLEAR THAT ONCE AN OPERATOR IS ON SHIFT,  
15 THE START TIME IS 6:00 A.M, THE TESTIMONY HERE IS THAT THE  
16 START TIME REPORTING TO JEFF FISCHER, IT WASN'T CLEAR. JEFF  
17 FISCHER TO THIS DAY WASN'T CLEAR. HE SAID 6:00, HE SAID 6:30.  
18 MENA SAID 6:00, HE SAID 6:30. IT WAS A FLEXIBLE SCHEDULE.  
19 FOUR PEOPLE IN A CLASS.

20 NOW, MS. NEWTON, SHE WAS LATE ON MARCH 23RD. SHE ADMITS  
21 IT. IT WAS A FEW DAYS AFTER HER FATHER'S MEMORIAL SERVICE.  
22 SHE WAS WITH HER MOM, SHE DIDN'T FEEL SHE COULD LET HER MOM  
23 ALONE. SHE LET JEFF FISCHER KNOW SHE WAS LATE.

24 SHE WASN'T LATE ON APRIL 7TH. THAT IS THE SECOND TIME  
25 JEFF FISCHER WROTE HER UP FOR BEING LATE. SHELL ADMITTED IT.

## CLOSING ARGUMENT - SMALLETS

1 SHE WASN'T LATE. THEY NEVER CHANGED HER PD LOG OR FILE. THEY  
2 ARE STILL CLAIMING SHE WAS LATE ON APRIL 7TH.

3 THE THIRD TIME THAT SHELL ACCUSES HER OF BEING LATE,  
4 JULY 22ND. NOW WE SAID START TIME IS 6:00 O'CLOCK BUT YOU'VE  
5 ALSO HEARD THERE IS A 15-MINUTE GRACE PERIOD. MS. NEWTON  
6 ARRIVED AT 6:15. MS. NEWTON HAD CAR TROUBLE THAT DAY AND  
7 ARRIVED AT THE REFINERY 6:18, THREE MINUTES AFTER THE GRACE  
8 PERIOD. BUT SHE DID WHAT SHE HAD BEEN TOLD TO DO AND WHAT THE  
9 OTHER OPERATORS TO DO WHEN THEY HAD THAT ISSUE. SOMETIMES  
10 THAT HAPPENS. SHE CALLED PATRIK NEUMAN ON THE SHIFT BEFORE  
11 HER, THEY TALKED, AND HE WAS GOING TO STAY. THAT'S IT. JUST  
12 A FEW EXTRA MINUTES.

13 NOW, THEY WERE GOING TO -- CAMERON CURRAN WAS GOING TO  
14 WRITE MS. NEWTON UP FOR THAT BUT ERIC PEREZ ULTIMATELY SAID  
15 NO, AND HE SAID NO BECAUSE HE SAID WE CAN'T SHOW THAT IF WE DO  
16 IT, WE WOULD BE TREATING HER THE SAME AS THE OTHER OPERATORS.

17 TAKE A LOOK AT THE EMAIL HE WROTE ABOUT THAT. HE SAYS IT.  
18 AND ULTIMATELY THEY DON'T GIVE HER A TARDY FOR THAT DAY. RAY  
19 JONES TOLD YOU WHY, BECAUSE IT IS A COMMON THING DO.

20 NOW, OTHER THAN THAT JULY 22ND, DATE, SHELL ADMITS  
21 MS. NEWTON WASN'T TARDY REMAINDER OF APRIL, WASN'T TARDY IN  
22 MAY, WASN'T TARDY IN JUNE, WASN'T TARDY IN JULY, WASN'T TARDY  
23 IN AUGUST, WASN'T TARDY IN SEPTEMBER. SHE MISSED -- SHE WAS  
24 LATE IN MARCH, AFTER HER FATHER DIED.

25 LET'S TALK A LITTLE BIT ABOUT SAFETY. SHELL HAS SAID

## CLOSING ARGUMENT - SMALLETS

1 NEWTON WAS UNSAFE BUT TAKE A LOOK AT ALL HER PROGRESS REVIEWS.  
2 HER SUPERVISORS REPEATEDLY TALKED ABOUT HER BEING  
3 SAFETY-MINDED, SAFETY CONSCIOUS, CONCERNED ABOUT HEALTH AND  
4 SAFETY. THESE ARE NOT THE KIND OF REVIEWS THAT YOU GIVE TO  
5 SOMEONE WHO IS NOT CONCERNED ABOUT SAFETY.

6 IN FACT, YOU KNOW SHE TOOK SAFETY SERIOUSLY. SHE PUSHED  
7 TO REPORT THE SULFURIC ACID SPILL AGAINST CAMERON CURRAN'S  
8 ADVICE, AND RAY JONES TOLD YOU THAT THAT MADE HIM PROUD OF  
9 HER, THAT IS A HARD THING FOR A NEW OPERATOR TO DO AND IT IS  
10 NOT THE KIND OF THING A NEW OPERATOR WHO DOESN'T CARE ABOUT  
11 SAFETY WOULD DO.

12 THE OTHER REASON THING WE KNOW ABOUT MS. NEWTON IS SHE  
13 ACCIDENTALLY OPENED THE WRONG VALVE. SHE DID. BUT YOU KNOW  
14 WHAT SHE DID RIGHT AFTERWARD? SHE WENT AND SHE TOLD HER  
15 SUPERVISOR THAT SHE MADE A MISTAKE BECAUSE SHE WANTED TO MAKE  
16 SURE THAT IT WAS ADDRESSED AND RESOLVED PROPERLY AND THAT  
17 PEOPLE WERE SAFE. THIS IS NOT AN UNSAFE OPERATOR.

18 ALSO, LOOK AT SHELL'S CONDUCT. THE INCIDENTS THAT THEY  
19 WROTE HER UP FOR, THEY TAKE THE PLACE IN MID-JULY. SHE IS NOT  
20 TERMINATED UNTIL THE END MUCH SEPTEMBER AND SHE CONTINUED TO  
21 DO HER JOB FOR THAT ENTIRE TIME PERIOD. IF SHELL BELIEVED SHE  
22 WAS A RISK TO THE COMMUNITY, WOULD THEY HAVE WANTED HER  
23 WORKING AS AN OPERATOR FOR THOSE TWO-AND-A-HALF MONTHS? IN  
24 FACT, WHEN RICHARD METCALF IS ASKED HIS OPINION TO REVISE THE  
25 PERFORMANCE REVIEW, HE ACTUALLY SPECIFICALLY SAYS SHE OUGHT TO

## CLOSING ARGUMENT - SMALLETS

1 BE SPENDING MORE TIME IN THE UNIT ON HER OWN, TRYING THINGS  
2 FOR THE FIRST TIME ON HER OWN. IS THAT THE KIND OF  
3 INSTRUCTION YOU GIVE TO AN OPERATOR WHO YOU THINK IS A DANGER  
4 TO THE COMMUNITY? DOESN'T MAKE SENSE.

5 SO WE BELIEVE WHEN YOU LOOK AT ALL THE EVIDENCE, THE  
6 EVIDENCE THAT WE HAVE PRESENTED IN SUPPORT OF OUR CLAIM THAT  
7 GENDER MOTIVATED SHELL'S DECISION AND YOU LOOK AT THE  
8 REASONS -- THE WAYS IN WHICH SHELL'S DECISION JUST DOESN'T ADD  
9 UP, ITS REASONS DON'T MAKE SENSE, THAT YOU WILL SEE THAT  
10 MS. NEWTON WAS -- SHELL FIRED MS. NEWTON BECAUSE OF HER GENDER  
11 AND SHE HAS ESTABLISHED THIS CLAIM.

12 OKAY. LET'S TALK ABOUT THE THIRD CAUSE OF ACTION.  
13 THAT'S -- THAT CLAIM IS FOR RETALIATION FOR HAVING REPORTED  
14 DISCRIMINATION OR HARASSMENT.

15 YOU CAN SEE THE ELEMENTS AGAIN. THE DISCHARGE -- THAT SHE  
16 WAS DISCHARGED, SHE WAS HARMED. THOSE ARE THE ELEMENTS THAT  
17 WE TALKED ABOUT PREVIOUSLY. SO THE TWO IMPORTANT THINGS TO  
18 FOCUS ON FOR THEIR CLAIM ARE THAT MS. NEWTON COMPLAINED ABOUT  
19 DISCRIMINATION AND HARASSMENT AND THAT COMPLAINT WAS A  
20 SUBSTANTIAL, MOTIVATING REASON FOR THE DISCHARGE.

21 LET'S TALK ABOUT HER COMPLAINTS. IN MARCH, MS. NEWTON  
22 TOLD ERIC PEREZ ABOUT HOW JEFF FISCHER HAD SAID THAT SHE  
23 COULDN'T BE ASSIGNED TO A PARTICULAR TEAM BECAUSE SHE WAS A  
24 GIRL. IN APRIL SHE TOLD JEFF FISCHER -- I'M SORRY -- SHE TOLD  
25 ERIC PEREZ THAT JEFF FISCHER WAS TREATING HER DIFFERENTLY WITH

1 RESPECT TO THE TARDIES.

2 NOW THINK FOR A SECOND WHAT MS. NEWTON KNOWS AT THE TIME  
3 SHE MAKES THAT COMPLAINT. SHE HAS BEEN WRITTEN UP FOR THE  
4 SECOND TIME FOR BEING LATE ON APRIL 7TH. SHE WASN'T LATE. SO  
5 OF COURSE SHE THINKS SHE IS BEING TREATED UNFAIRLY AND  
6 UNREASONABLY. SHE'S BEING WRITTEN UP FOR SOMETHING THAT SHE  
7 DIDN'T DO AND THAT IS WHAT SHE TELLS ERIC PEREZ.

8 NOW IN MAY, SHE CALLS ERIC PEREZ ON HIS PERSONAL CELL  
9 PHONE AND TELLS HIM ABOUT THE PARALLEL TRAINING CHECKLIST AND  
10 HOW JEFF FISCHER HANDLED THAT. IN JULY SHE TELLS CAMERON  
11 CURRAN THAT TRAPS ARE BEING SET FOR HER, THAT SHE'S NOT BEING  
12 TREATED LIKE EVERYONE ELSE AND THAT SHE IS BEING SINGLED OUT.  
13 CAMERON CURRAN TOLD ERIC PEREZ THIS, AND ERIC PEREZ TOLD  
14 CHRISTINE LAYNE AND MIKE BECK. TAKE A LOOK AT EXHIBIT 31,  
15 WHERE THEY LIST WHAT THEY UNDERSTOOD MS. NEWTON -- WHAT  
16 CONCERNS THEY UNDERSTOOD THAT MS. NEWTON WAS EXPRESSING.

17 NOW THERE IS THE AUGUST 2ND MEETING. MS. NEWTON TOLD  
18 CHRISTINE LAYNE AND ERIC PEREZ AT THAT MEETING THAT, AMONG  
19 VARIOUS OTHER THINGS, SHE TOLD THEM THAT JEFF FISCHER TOLD HER  
20 THAT WOMEN DON'T MAKE IT IN OPCEN. CHRISTINE LAYNE ADMITTED  
21 THAT. SHE ALSO TOLD THEM THAT THINGS WERE WRITTEN IN HER PD  
22 LOG THAT WEREN'T BEING WRITTEN IN OTHER PD LOG OF OTHER  
23 OPERATORS. CHRISTINE LAYNE ADMITTED THAT AS WELL. CHRISTINE  
24 LAYNE ADMITTED THAT SHE UNDERSTOOD THAT MS. NEWTON WAS  
25 REPORTING DISCRIMINATION AND HARASSMENT.



1           AUGUST 29TH, THE STICKER COMES INTO THE REFINERY.  
2           MS. NEWTON IMMEDIATELY TELLS ERIC PEREZ ABOUT THAT STICKER.  
3           AND WHEN SHE DOESN'T HEAR BACK FROM HIM, SHE FOLLOWS UP AND  
4           THIS TIME FOR THE FIRST TIME IT'S IN WRITING. SEPTEMBER 17TH,  
5           SEPTEMBER 20TH, SHE PUTS IN WRITING WHAT IS HAPPENING TO HER.  
6           AND SHE DOESN'T JUST REFERENCE THE STICKER, SHE TALKS ABOUT  
7           BEING SINGLED OUT.

8           AS THE JURY INSTRUCTIONS TELL YOU, MS. NEWTON DIDN'T NEED  
9           TO USE MAGIC WORDS TO COMPLAIN OF DISCRIMINATION OR  
10          HARASSMENT. SHE DIDN'T NEED TO SAY GENDER OR HARASSMENT OR  
11          HOSTILE WORK ENVIRONMENT. SHE JUST NEEDED TO CONVEY FACTS  
12          THAT WOULD ALLOW SHELL TO UNDERSTAND THAT IS WHAT SHE WAS  
13          TALKING ABOUT. AND CHRISTINE LAYNE -- SO SHE CERTAINLY DID  
14          THAT AND IN FACT CHRISTINE LAYNE ADMITTED SHE DID. LOOK,  
15          CAMERON CURRAN, HE KNEW IT TOO. HE SAYS TO ERIC PEREZ IN A  
16          CHAT MESSAGE THAT MS. NEWTON WAS PUSHING HARD ON THE EQUALITY  
17          THING. HE KNEW.

18          NOW, MS. NEWTON'S -- ALL THOSE REPORTS THAT SHE MADE WHERE  
19          SHE IS SAYING I'M NOT BEING TREATED FAIRLY HERE, WE NEED TO  
20          ADDRESS THIS, THAT WAS THE SUBSTANTIAL MOTIVATING REASON FOR  
21          SHELL'S DECISION TO FIRE HER. YOU CAN TELL THIS FROM THE  
22          TIMING.

23          SHELL MADE ITS LAST ENTRY INTO MS. NEWTON'S PD LOG ON  
24          JULY 18TH. WELL, SHE MEETS WITH CHRISTINE LAYNE AND ERIC  
25          PEREZ ON AUGUST 2ND, AND SHE TELLS CHRISTINE LAYNE BEFORE

## CLOSING ARGUMENT - SMALLETS

1 CHRISTINE LAYNE TELLS HER TO STOP -- SHE GIVES CHRISTINE LAYNE  
2 THE INFORMATION ABOUT WHAT IS GOING ON. THEN SHE FINDS THE  
3 STICKER ON HER DESK, SHE REPORTS THAT AND IN SEPTEMBER SHE  
4 PUTS IT IN WRITING. THE VERY NEXT DAY IT IS ERIC PEREZ  
5 PRESSURES RICHARD METCALF TO CHANGE THE PROGRESS REVIEW SAYING  
6 WE NEED TO ALIGN. THIS IS RIGHT AFTER SHE'S PUT HER CONCERNS  
7 IN WRITING. AND THEN A WEEK LATER SHELL FIRES HER.

8 NOW YOU CAN ALSO SEE SHELL'S RETALIATORY INTENT FROM THEIR  
9 LACK OF INTEREST IN FIGURING OUT THE TRUTH. WHEN MS. NEWTON  
10 FIRST TOLD ERIC PEREZ HOW JEFF FISCHER WAS TREATING HER, HE  
11 KIND OF LAUGHED. SHE TOLD YOU THIS. HE SAID -- HE TOLD HER  
12 TO GIVE IT SOME TIME, JEFF FISCHER IS A GOOD GUY, HE HAS BEEN  
13 HERE FOR A LONG TIME. THAT IS NOT THE REACTION OF A COMPANY  
14 THAT WANTS TO ADDRESS ISSUES. IT IS A REACTION OF A COMPANY  
15 THAT WANTS TO PUSH THEM UNDER THE RUG.

16 LOOK AT CHRISTINE LAYNE'S REACTION DURING THE AUGUST 2ND  
17 MEETING. SHE SAYS STOP, STOP RIGHT THERE, THINK OF WHAT YOU  
18 ARE DOING, YOU ARE MAKING SERIOUS ACCUSATIONS. EMPLOYEES ARE  
19 NERVOUS TO BRING FORWARD COMPLAINTS OF HARASSMENT AND  
20 DISCRIMINATION AND PARTICULARLY WHEN THEY ARE TELLING HER WE  
21 ARE GOING TO INTERVIEW YOUR COWORKERS, ALL OF WHOM ARE STILL  
22 ON PROBATION, OF COURSE SHE'S NERVOUS. RATHER THAN  
23 ENCOURAGING HER, RATHER THAN OFFERING A PROCESS, THEY JUST SIT  
24 THERE, THEY BASICALLY TELL HER TO STOP. AGAIN, THAT IS NOT  
25 THE REACTION OF A COMPANY WHO WANTS TO ADDRESS THESE ISSUES.

1           AND THEN OF COURSE THERE IS SHELL'S FAILURE TO DO ANYTHING  
2           TO BRING -- FIGURE OUT WHO BROUGHT THE STICKER INTO THE  
3           REFINERY. THAT IS IMPORTANT. YOU NEED TO KNOW THAT. BECAUSE  
4           THAT STICKER REFLECTS TO BELIEVE WOMEN SHOULDN'T BE THERE. IF  
5           YOU HAVE EMPLOYEES WHO FEEL THAT WAY ABOUT THEIR COWORKERS, A  
6           COMPANY NEEDS TO KNOW THAT, ADDRESS IT, AND FIGURE IT OUT.  
7           NOT ONLY DID THEY NOT TRY TO FIGURE IT OUT, THAT VERY DAY THEY  
8           SAY DON'T DOCUMENT IN ANYONE'S PD FILE. THEY ARE PROTECTING  
9           THE MEN.

10          NOW, WHAT I TOLD YOU EARLIER ABOUT HOW THE DECISION-MAKING  
11          AUTHORITY WORKS, YOU DON'T NEED TO FIND THAT MIKE BECK HAD  
12          RETALIATORY ANIMUS OR TOM RIZZO OR THOR NYGAARD OR LORI  
13          MARTINELLI WHO SHELL SAYS APPROVED THE DECISION. WHAT YOU  
14          NEED TO FIND IS THAT -- THE PEOPLE THAT PROVIDED THE  
15          INFORMATION, THE PEOPLE WHO MADE THE RECOMMENDATION, THAT THEY  
16          WERE MOTIVATED BY A DESIRE TO RETALIATE AND THAT THAT  
17          MOTIVATION ULTIMATELY INFECTED THE DECISION, LED TO THE  
18          DECISION.

19          NOW, JUST A BIT OF CLARIFICATION ON WHAT WE NEED TO PROVE  
20          ON THIS CLAIM. WE BELIEVE THAT WE HAVE SHOWN TO YOU THAT  
21          MS. NEWTON WAS IN FACT HARASSED AND DISCRIMINATED AGAINST BUT  
22          THAT DOESN'T MATTER FOR PURPOSES OF A RETALIATION CLAIM. IF  
23          SHE HAD REASONABLE CAUSE TO BELIEVE THAT SHE WAS BEING  
24          HARASSED AND DISCRIMINATED AGAINST, IF THINGS THAT WERE  
25          HAPPENING IN THE WORKPLACE THAT MADE HER FEEL THAT WAY AND SHE

## CLOSING ARGUMENT - SMALLETS

1 TELLS SHELL ABOUT IT, SHELL KNOWS WHAT SHE IS TALKING ABOUT,  
2 WHICH THEY HAVE ADMITTED, AND THEN THEY ACT IN A RETALIATORY  
3 WAY, THAT IS UNLAWFUL.

4 THE EVIDENCE SHOWS SHELL FIRED MS. NEWTON BECAUSE SHE WAS  
5 A WOMAN WHO DEMANDED EQUALITY. MS. NEWTON HAS ESTABLISHED  
6 THIS CLAIM.

7 MS. NEWTON'S NEXT CLAIM IS FOR FAILURE TO PREVENT  
8 HARASSMENT, DISCRIMINATION OR RETALIATION. HERE ARE THE  
9 ELEMENTS OF THAT CLAIM. AGAIN, YOU SEE MANY REPEATING ELEMENT  
10 AND THE KEY THING TO FOCUS ON IS DEFENDANT FAILED TO TAKE ALL  
11 REASONABLE STEPS TO PREVENT HARASSMENT DISCRIMINATION OR  
12 RETALIATION.

13 WE TALKED ABOUT A LOT OF THIS ALREADY, BUT LET'S LOOK AT  
14 WHAT SHELL DID. MIKE BECK, HE KNEW ABOUT MS. NEWTON'S  
15 COMPLAINTS. HE IS IN THE EMAILS. HE SAID HE KNEW, BUT HE  
16 DIDN'T DO ANYTHING HIMSELF TO ADDRESS THE ISSUES. HE EXPECTED  
17 CHRISTINE LAYNE TO TAKE CARE OF IT. WELL, YOU HEARD CHRISTINE  
18 LAYNE. EVEN THOUGH SHE IS HR, SHE DIDN'T DO ANYTHING TO  
19 PERSONALLY TAKE CARE OF IT. SHE SAID IT WAS ERIC PEREZ'S JOB.  
20 LOOK AT ERIC PEREZ, WHAT DID HE DO? HE DIDN'T DO ANYTHING  
21 ABOUT THE STICKER AND EVEN THOUGH HE KNEW, HE NEVER  
22 INTERVIEWED MS. NEWTON AND EVEN THOUGH HE KNEW WHO HER  
23 COWORKERS WERE, REPORTING TO JEFF FISCHER AND EVEN THOUGH HE  
24 KNEW WHO HER COWORKERS WERE WHEN THEY WERE ON THE OPCEN TEAM,  
25 HE DIDN'T TALK TO ANY OF THEM BEFORE SHE WAS FIRED. INSTEAD

1       THEY KEPT PLACING THE BURDEN ON MS. NEWTON, TO GIVE US MORE,  
2       GIVE US MORE, GIVE US MORE. SHE'S TOLD THEM ENOUGH TO -- SO  
3       THEY CAN INVESTIGATE AND NOT PUT HER IN THIS HORRIBLE POSITION  
4       OF HAVING TO OFFER HER COWORKERS UP TO THEM.

5               THIS IS A COMPANY THAT FAILED TO INVESTIGATE. IT IS  
6       EVERYONE BLAMING EVERYONE ELSE. MIKE BECK SAYS CHRISTINE,  
7       CHRISTINE SAYS IT IS ERIC. AND IT'S NO ONE TAKING  
8       RESPONSIBILITY FOR WHAT HAPPENED. SHELL FAILED TO TAKE  
9       RESPONSIBILITY TO PREVENT DISCRIMINATION, HARASSMENT, OR  
10      RETALIATION. SO MS. NEWTON HAS ESTABLISHED THAT CLAIM.

11             MS. NEWTON FINAL CLAIM IS FOR WHISTLEBLOWER RETALIATION.  
12      WE CAN SEE THE ELEMENTS OF THAT CLAIM HERE AND AGAIN IT IS IN  
13      YOUR JURY INSTRUCTIONS. LOTS OF ONES THAT REPEAT, BUT LET'S  
14      TALK ABOUT THE TWO KEY ONES.

15             FIRST, SHELL BELIEVED THAT MS. NEWTON HAD DISCLOSED TO A  
16      PERSON WITH AUTHORITY OVER HER, THE SUPERVISOR, THE FAILURE TO  
17      RESPOND TO A SULFURIC ACID SPILL AT THE REFINERY. YOU KNOW  
18      THAT HAPPENED. THE SPILL HAPPENS AND SHE TALKED TO CAMERON  
19      CURRAN ABOUT HOW IT HAS NOT BEEN PROPERLY DOCUMENTED. CAMERON  
20      CURRAN ADMITS IT. HE TELLS HER TO TAKE IT OUT OF HER SHIFT  
21      REPORT AND SHE OBJECTS. MS. NEWTON ALSO OBJECTS TO NOT TAPING  
22      OFF THE AREA. SHE IS WORRIED ABOUT THE CONTRACTORS WHO ARE IN  
23      THE AREA AND SHE ALSO OBJECTS TO CAMERON CURRAN NOT USING  
24      PROPER PROTECTIVE EQUIPMENT. MS. NEWTON HAD REASONABLE CAUSE  
25      TO BELIEVE THAT WHAT SHE DID WAS A LEGAL VIOLATION. SHE

## CLOSING ARGUMENT - SMALLETS

1 TESTIFIED THAT SHE WAS AN OSHA VIOLATION. AND SHE ALSO TOLD  
2 YOU THAT SHE BELIEVED THAT ENVIRONMENTAL LAWS WERE BEING  
3 VIOLATED. SO SHE IS TELLING SHELL WE NEED TO DEAL WITH THIS  
4 PROPERLY. THAT IS PART OF THE A PATTERN. SHE HAD BEEN  
5 DOCUMENTING THE ISSUES WITH THE SIGHT CLASS IN JUNE THAT LED  
6 TO THE SULFURIC ACID SPILL IN JULY, AND THAT EVEN AFTER  
7 CAMERON CURRAN PRESSURES HER TO TAKE IT OFF THE SHIFT REPORT  
8 AND TELLS HER SHE IS GOING GET A REPUTATION OF BEING A  
9 TATTLETALE OR A RAT IF SHE LEAVES IT IN, SHE STILL KEEPS  
10 DOCUMENTING THE FACT THAT THE TANK IS OVER A HUNDRED PERCENT,  
11 WHICH IT SHOULDN'T BE. SO SHE IS TRYING DO WHAT SHE CAN TO  
12 MAKE SURE THIS IS HANDLED IN A SAFE MANNER.

13 NOW FINAL ELEMENT I WANT YOU TO LOOK AT IS THAT  
14 MS. NEWTON'S DISCLOSURE OF THE INFORMATION WAS A CONTRIBUTING  
15 FACTOR IN SHELL'S DECISION TO TERMINATE HER. NOW, UNLIKE THE  
16 OTHER CLAIMS WHERE THE STANDARD IS A SUBSTANTIAL, MOTIVATING  
17 REASON, CONTRIBUTING FACTOR IS A LOWER STANDARD. JUST MEANS  
18 THAT IT WAS ONE OF THE FACTORS THAT CONTRIBUTED TO SHELL'S  
19 DECISION TO FIRE HER. AND WE KNOW THAT IT WAS.

20 RAY JONES TOLD YOU WHEN MS. NEWTON MADE THAT REPORT SHE  
21 PUT A TARGET ON HER BACK, TALKED ABOUT HOW MOST NEW EMPLOYEES  
22 DON'T HAVE THE COURAGE OR INITIATIVE TO DO THAT BUT SHE DID.  
23 AND CAMERON CURRAN, HE TOLD YOU HE DIDN'T WANT HER TO REPORT  
24 IT. HE WAS WORRIED WHAT WAS GOING TO HAPPEN TO THE OTHER  
25 GUYS. HE DIDN'T WANT HER TO GET THE REPUTATION OF BEING A

## CLOSING ARGUMENT - SMALLETS

1 TATTLETALE OR A RAT.

2 WELL THEN LET'S TAKE A LOOK AT WHAT HAPPENS NEXT, SULFURIC  
3 ACID SPILL, JULY 4TH. CAMERON CURRAN HAD BEEN SUPERVISING  
4 MS. NEWTON FOR SEVERAL WEEKS PREVIOUSLY. THERE IS NOT A  
5 SINGLE INCIDENT IN HER PD LOG, GOOD, BAD OR OTHERWISE BY  
6 MR. CURRAN. AFTER THE 4TH, THEY GO ON THEIR LONG CHANGE, THEY  
7 COME BACK, AND IN A THREE-DAY PERIOD MR. CURRAN PUT SEVEN  
8 WRITE-UPS IN MS. NEWTON'S PD LOG.

9 LET'S TALK ABOUT THOSE WRITE-UPS. EVEN MIKE BECK ADMITTED  
10 THAT TWO OF THEM WERE NO BIG DEAL. HE SAID THAT ETHICS FLARE  
11 GAS SAMPLE SYSTEM BEING AN ALARM, IT'S THE KIND OF A MISTAKE  
12 NEW OPERATORS MAKE, TELLING THEM THEY'VE MADE IT, NOT A BIG  
13 DEAL. HE ALSO SAID THE CPI OUTLET INCIDENT WAS THE TYPICAL  
14 KIND OF MISTAKE A NEW HIRE WOULD MAKE. SO TWO TYPICAL  
15 MISTAKES FOR A NEW HIRE DOCUMENTED IN HER PD LOG.

16 BUMPING THE PUMP, RAY JONES TOLD YOU NOT A CRITICAL  
17 ACTION. AGAIN, NOT THE KIND OF THING YOU WOULD EXPECT THE  
18 KIND OF THING YOU WOULD EXPECT TO BE DOCUMENTED IN THE PD  
19 FILE.

20 THE OIL MIST RECLASSIFIER. LET'S LOOK AT WHAT HAPPENED  
21 THERE. IT IS SUPPOSED TO BE CHANGED ON EACH SHIFT. WHEN  
22 MS. NEWTON COMES IN THE MORNING, CAMERON CURRAN TELLS HER IT  
23 HASN'T BEEN CHANGED JUST SHORTLY AFTER HER SHIFT STARTS. HE'S  
24 BLAMING HER, DOCUMENTING HER FOR THE MISTAKE THAT THE MALE  
25 EMPLOYEE ON THE PREVIOUS SHIFT MADE. I AM SORRY. I MISSPOKE.

## CLOSING ARGUMENT - SMALLETS

1 WHEN SHE COMES IN AT NIGHT AT 6:00 P.M. HE IS BLAMING HER FOR  
2 THE PREVIOUS MISTAKE THAT WAS MADE BY THE MALE OPERATOR ON THE  
3 PREVIOUS SHIFT.

4 THEN THERE'S THE CONVERSATION THAT TAKES PLACE ABOUT WHAT  
5 DAY MS. NEWTON WAS SUPPOSED TO MAKE UP, THE DAY SHE WAS  
6 SUPPOSED TO MAKE UP. MS. NEWTON, SHE THOUGHT IT WAS  
7 JULY 22ND. THAT'S THE DAY SHE COMES INTO WORK. SHELL ADMITS  
8 THAT SHE MADE UP THE TIME. YOU CAN SEE IT. IT'S EXHIBIT 555.  
9 CAMERON CURRAN IS NOW TRYING TO SAY THAT MS. NEWTON WAS LYING  
10 ABOUT THIS BUT TAKE A LOOK AT WHAT HE SAID AT THE TIME. TAKE  
11 A LOOK AT WHAT HE SAID ON JULY 29TH IN HER PERSONNEL FILE. HE  
12 SAID THAT SHE'S HONEST AND HAS INTEGRITY. WOULD YOU SAY THAT  
13 ABOUT SOMEONE WHO YOU THOUGHT WAS LYING TO YOU JUST TWO WEEKS  
14 PREVIOUSLY.

15 NOW LET'S TALK ABOUT THE DRAEGER TUBES. RAY JONES TOLD  
16 YOU HOW DRAEGER TUBES WORK. GLASS TUBE, YOU HAVE TO BREAK  
17 BOTH ENDS AND DRAW GAS THROUGH IT TO GET A READING. WHEN  
18 MS. NEWTON WENT OUT TO TAKE THE SAMPLE, THERE WERE NO DRAEGER  
19 TUBES IN THE USUAL OCCASION BUT SHE FOUND A DRAEGER TUBE THAT  
20 HAD ONE END BROKEN AND THEN IT COULDN'T HAVE BEEN USED. THE  
21 SECOND END WAS NOT BROKEN. SHE HAD SEEN HER TRAINER USE SUCH  
22 SIMILAR DRAEGER TUBES SO SHE USED IT TO TAKE A SAMPLE. SHE  
23 GOT A READING. HER PLAN WAS TO CHECK IT WITH ANOTHER DRAEGER  
24 TUBE TO MAKE SURE IT WAS ACCURATE.

25 NOW SHELL IS TRYING TO CLAIM THAT THIS SHOWS A LACK OF



## CLOSING ARGUMENT - SMALLETS

1 JUDGMENT ON MS. NEWTON'S PART BUT TAKE A LOOK AT SHELL'S  
2 POLICY. IT IS EXHIBIT 99. YOU CAN SEE HERE IT SAYS MOST  
3 DRAEGER TUBES CAN BE REUSED AFTER A NEGATIVE RESULT UP TO TEN  
4 TIMES. WELL HERE IT WASN'T EVEN USED ONCE. THERE WAS NO  
5 RESULT. SO THAT SUGGESTS, THAT SHOWS YOU THAT MS. NEWTON, SHE  
6 WASN'T BEING UNREASONABLE OR SHOWING POOR JUDGMENT. SHE WAS  
7 DOING WHAT WAS CONSISTENT WITH WHAT HER TRAINERS HAD SHOWN HER  
8 AND WHAT SHELL'S POLICIES ALLOWED HER TO DO.

9 NOW, LET'S TALK ABOUT THE BAKER TANK. RAY JONES EXPLAINED  
10 TO YOU BAKER TANK HAD WASH WATER IN IT. 96-PERCENT WATER,  
11 4 PERCENT CLEANING SOLUTION. MS. NEWTON, SHE ACCIDENTALLY  
12 OPENED THE WRONG VALVE. THE VALVE LINEUP HAD BEEN CHANGED.  
13 SHE OPENED THE WRONG ONE. SHE MADE A MISTAKE. SHE ADMITS IT.  
14 WHAT DID SHE DO WHEN SHE MADE THE MISTAKE? SHE IMMEDIATELY  
15 FOUND HER SUPERVISOR, CAMERON CURRAN, AND SHE REPORTED IT TO  
16 HIM BECAUSE SHE WANTED TO MAKE SURE THAT IT WAS PROPERLY  
17 ADDRESSED.

18 RAY JONES TOLD YOU OPERATORS MAKE MISTAKES. SOMETIMES  
19 THEY OPEN THE WRONG VALVE AND THAT IS WHY IT IS REALLY  
20 IMPORTANT AT THE REFINERY IF OPENING THE WRONG VALVE IS GOING  
21 TO HAVE A SIGNIFICANT, NEGATIVE CONSEQUENCE THAT YOU BLOCK IT  
22 OFF WITH A MECHANICAL MEANS. YOU DON'T WANT TO BE IN A  
23 SITUATION WHEN AN OPERATOR MISTAKE COULD CAUSE SOMETHING VERY  
24 BAD TO HAPPEN.

25 NOW, TAKE A LOOK AT THE DIFFERENCES IN THE WAY THAT SHELL

1 TREATED THE BAKER TANK AND SULFURIC ACID SPILL. MS. NEWTON'S  
2 MISTAKE, THE WASH WATER, WAS DOCUMENTED IN HER PD LOG AND IT  
3 WAS ON A ZERO TO SIXTY WITHIN HOURS. THE SULFURIC ACID SPILL,  
4 ZERO TO SIXTY THREE WEEKS LATER. THERE IS A DIFFERENCE IN HOW  
5 THEY RESPONDED.

6 NOW, WHEN THE DECISION-MAKERS ARE MAKING -- WHEN SHELL IS  
7 DECIDING -- SO FIRST OF ALL THOSE WRITE-UPS THEMSELVES ARE  
8 RETALIATORY. WHEN SHELL IS DECIDING WHETHER OR NOT TO FIRE  
9 MS. NEWTON, THOSE VERY WRITE-UPS ARE WHAT THEY RELY UPON.  
10 THIS SHOWS THAT -- THAT SHELL HAD A RETALIATORY MOTIVE WHEN  
11 MAKING THE DECISION TO TERMINATE MS. NEWTON, THAT HER REPORT  
12 OF THE SULFURIC ACID SPILL WAS A CONTRIBUTING FACTOR.

13 NOW, IN THIS PARTICULAR CLAIM SHELL HAS A DEFENSE. ONCE  
14 WE ESTABLISH THAT THE REPORT OF THE SPILL WAS A CONTRIBUTING  
15 FACTOR, SHELL IS ENTITLED TO PROVE THAT THEY WOULD HAVE MADE  
16 THE SAME DECISION AT THE SAME TIME FOR A LEGAL REASON BUT  
17 SHELL HAS TO PROVE THAT DEFENSE BY CLEAR AND CONVINCING  
18 EVIDENCE.

19 CLEAR AND CONVINCING EVIDENCE THAT IS A MUCH HIGHER  
20 STANDARD THAN PREPONDERANCE OF THE EVIDENCE. IT'S EVIDENCE  
21 THAT LEAVES YOU WITH A FIRM CONVICTION THAT IS HIGHLY PROBABLE  
22 THAT WHAT SHELL IS CLAIMING IS TRUE.

23 AND SHELL HAS NOT PROVEN HERE THAT THEY WOULD HAVE FIRED  
24 HER IN THE ABSENCE -- BY CLEAR AND CONVINCING EVIDENCE IN THE  
25 ABSENCE OF MS. NEWTON'S REPORT.

## CLOSING ARGUMENT - SMALLETS

1           NOW LET'S RETURN TO THE VERDICT FORM. NOW IS THE TIME FOR  
2           YOU TO HOLD SHELL RESPONSIBLE FOR WHAT THEY DID. WE SHOWED  
3           YOU THE VERDICT FORM IN THE BEGINNING OF CLOSING. WE WOULD  
4           LIKE TO SHOW IT TO YOU AGAIN NOW. YOU CAN SEE THE QUESTIONS  
5           THAT YOU ARE GOING TO BE ASKED.

6           QUESTION ONE. MS. NEWTON HAS ESTABLISHED THAT SHELL  
7           HARASSED HER BECAUSE OF HER GENDER. SO CHECK YES ON THAT  
8           CLAIM. MS. NEWTON HAS ESTABLISHED THAT SHELL DISCRIMINATED  
9           AGAINST HER BECAUSE OF HER GENDER, SO CHECK YES ON THAT CLAIM.

10          MS. NEWTON HAS ESTABLISHED THAT SHELL RETALIATED --  
11          ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE THAT SHELL  
12          RETALIATED AGAINST HER FOR REPORTING DISCRIMINATION AND  
13          HARASSMENT, SO CHECK YES ON THAT CLAIM.

14          MS. NEWTON HAS ESTABLISHED BY THE PREPONDERANCE OF THE  
15          EVIDENCE THAT SHELL FAILED TO TAKE REASONABLE STEPS TO PREVENT  
16          DISCRIMINATION, HARASSMENT, AND RETALIATION, SO CHECK YES ON  
17          THAT CLAIM.

18          AND FINALLY, MS. NEWTON HAS ESTABLISHED THAT SHELL  
19          RETALIATED AGAINST HER FOR REPORTING THE SULFURIC ACID SPILL,  
20          SO CHECK YES ON THAT CLAIM.

21          ONCE YOU RETURNS YOUR VERDICT FORM, WE WILL BE ASKING YOU  
22          TO COMPENSATE MS. NEWTON FOR THE HARM THAT SHELL CAUSED HER  
23          BUT AT THAT TIME WE WILL TALK TO YOU ABOUT THAT HARM AND  
24          DAMAGES SHE SUFFERED. FOR NOW WE ASK YOU TO SAY YES ON YOUR  
25          VERDICT FORM AND HOLD SHELL ACCOUNTABLE FOR WHAT IT DID.

1       THANK YOU.

2               **THE COURT:**   OKAY.   SO LET'S -- THANK YOU, COUNSEL.  
3       LET'S GO AHEAD AND TAKE A SHORT BREAK LIKE TEN MINUTES.   AND  
4       THEN YOU WILL GET THE SECOND CLOSING, AND THAT WAY WHEN YOU GO  
5       BACK AFTERWARDS, YOUR LUNCH WILL BE THERE.   SO I THINK THAT  
6       WILL WORK BETTER.   SO JUST 10 MINUTES.   WE'LL STAND IN RECESS  
7       FOR TEN MINUTES.

8       (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

9               **THE COURT:**   OKAY.   JURY HAS LEFT THE ROOM.   SO WE'LL  
10       STAND IN RECESS FOR TEN MINUTES.

11              **MR. LAFAYETTE:**   THANK YOU, YOUR HONOR.

12       (RECESS TAKEN AT 11:29 A.M.; RESUMED AT 11:40 P.M.)

13              **THE COURT:**   READY?

14              **MR. LAFAYETTE:**   YES, YOUR HONOR.

15       (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

16              **THE COURT:**   OKAY.   WE ARE BACK ON THE RECORD.   THE  
17       RECORD WILL REFLECT THE JURY IS BACK.

18       ALL READY TO GO?   MR. LAFAYETTE, YOU MAY PROCEED WITH YOUR  
19       CLOSING ARGUMENT.

20                              **CLOSING ARGUMENT**

21              **MR. LAFAYETTE:**   GOOD MORNING.

22       IT MAY NOT SEEM APPARENT TO YOU BUT I DON'T LIKE DOING  
23       CLOSINGS.   NUMBER OF REASONS, ONE, THEY ARE NERVE-RACKING.   I  
24       THINK WHEN I GET UP AND START TALKING TO YOU, THERE IS  
25       SOMETHING THAT I AM GOING TO FORGET.   THERE IS SOMETHING I

1 SHOULD HAVE ADDRESSED THAT I NEEDED TO TALK ABOUT. THAT IS  
2 NERVE-RACKING.

3 THE OTHER PART OF IT IS THIS: IN ORDER TO DO MY JOB, I  
4 SOMETIMES HAVE TO TALK ABOUT THINGS AND ABOUT CREDIBILITY AND  
5 ABOUT THINGS THAT PEOPLE HAVE SAID, AND THE MOTIVATIONS FOR  
6 THINGS THAT I DON'T LIKE TO TALK ABOUT. I THINK THEY ARE  
7 THINGS THAT MOST OF US DON'T LIKE TO TALK ABOUT. BUT TODAY,  
8 TO DO MY JOB, I'M GOING TO DO THAT IN A WAY THAT NORMALLY I  
9 PROBABLY DON'T TALK ABOUT PEOPLE AND ABOUT THINGS.

10 BUT BEFORE I GET INTO THAT I WANT TO TALK ABOUT SOMETHING  
11 ELSE. I WANT TO MAKE SURE THAT WE ARE FOCUSED ON WHAT WE ARE  
12 SUPPOSED TO BE DOING HERE TODAY. AND THE FIRST THING I'M  
13 GOING TO TALK ABOUT IS THIS: YOU SEE, THIS IS NOT A CASE  
14 ABOUT WHETHER OR NOT SHELL, EQUILON HAD GOOD CAUSE TO  
15 TERMINATE HER. THAT'S NOT OUR ISSUE HERE. DOESN'T MAKE ANY  
16 DIFFERENCE BECAUSE AS THE JUDGE TOLD YOU, PRELIMINARY IN  
17 CALIFORNIA, EMPLOYMENT IS PRESUMED TO BE AT WILL. THAT MEANS  
18 THAT AN EMPLOYER MAY DISCHARGE AN EMPLOYEE FOR ANY REASON OR  
19 FOR GOOD, BAD, MISTAKEN, UNWISE OR EVEN UNFAIR REASONS.  
20 THAT'S THE LAW.

21 AND THAT'S WHAT THE JUDGE TOLD YOU. IT CAN BE UNFAIR.  
22 THE ONLY THING THAT IT CAN'T BE IS DISCRIMINATORY BECAUSE OF A  
23 PROTECTED STATUS LIKE GENDER OR AGE OR RACE OR DISABILITY OR  
24 NATIONAL ORIGIN.

25 SO OUR FOCUS HERE TODAY HAS TO BE NOT ON WHETHER OR NOT

## CLOSING ARGUMENT - LAFAYETTE

1       THERE WAS FAIRNESS IN THE TERMINATION. THE FOCUS HAS TO BE ON  
2       WHETHER OR NOT THERE WAS DISCRIMINATION IN THE TERMINATION.  
3       AND I WANT US TO BE CLEAR ABOUT THAT BECAUSE THAT IS WHAT I'M  
4       GOING TO TALK ABOUT TODAY, WHETHER OR NOT THERE IS THAT IN  
5       THIS CASE.

6       LAST WEEK, ALMOST AT THE SAME TIME, I STOOD BEFORE YOU AND  
7       I SAID THAT IN MY VIEW THIS CASE STARTED ON JULY 19, 2016.  
8       HAVE YOU LOOKED AT THIS SLIDE THAT I JUST PUT IN FRONT OF YOU,  
9       YOU'LL SEE THAT'S WHAT IT SAYS. MONDAY, DECEMBER 10, THAT IS  
10      WHAT I USED AND THAT IS WHAT I STILL BELIEVE. BECAUSE, YOU  
11      SEE, AS OF THAT DAY WHAT HAD HAPPENED, AS OF THAT DAY ERIC  
12      PEREZ HAD SENT AN EMAIL AND HE HAD MENTIONED SOMETHING ABOUT  
13      HER PD LOG. AND IN HER PD LOG, THERE WERE SOME THINGS THAT  
14      WERE MENTION, TARDINESS, 4/7/16. 5/9 2016, IAN CHAMBERLAIN  
15      COACHING HER FOR NOT HAVING HER GOGGLES AND THE RADIO IN THE  
16      UNIT. SHE MAY SAY SOMETHING ABOUT THE CHOICE OF WORDS HE MAY  
17      HAVE USED AT THE TIME BUT THE ISSUE STILL STANDS. IT WAS  
18      WRONG TO BE OUT IN THAT UNIT WITHOUT THOSE TWO THINGS BECAUSE  
19      THOSE TWO THINGS HELP SAVE YOUR LIFE AND THE LIVES OF OTHER  
20      PEOPLE. AND IF SHE DIDN'T HAVE THOSE THINGS, IT WAS  
21      APPROPRIATE FOR HIM TO SAY IT, AND IT WAS APPROPRIATE FOR HIM  
22      TO WRITE IT. AND NO ONE HAS SAID OTHERWISE. AND THERE IS NO  
23      EVIDENCE IN THIS CASE THAT IN ANY WAY WHATSOEVER INDICATES  
24      THAT THAT IS AN ISSUE OF GENDER OR AN ISSUE OF HARASSMENT.  
25      IT'S NOT. IT'S COMMON SENSE. AND IT WAS COMMON COURTESY OF

1 HIM TO BRING IT TO HER ATTENTION. IT IS A LIFE-SAVING ISSUE.  
2 AND TO SUGGEST OTHERWISE IS COMPLETELY DISINGENUOUS.

3 THEN WE HAD A DISCUSSION ABOUT 7/17/16 AND I KNOW  
4 PLAINTIFF'S COUNSEL SAYS, WELL, ALL OF THIS HAPPENS AFTER THE  
5 ACID SPILL. WELL, IF IT HAPPENED, DOES IT REALLY MAKE ANY  
6 DIFFERENCE IF IT FELL BEHIND SOMETHING ELSE OR NOT? DID YOU  
7 HEAR THE PLAINTIFF COME IN HERE AND SAY, I DIDN'T DO THAT?  
8 NO, YOU DIDN'T HEAR THAT. DID YOU HEAR ANYBODY SAY IT DIDN'T  
9 HAPPEN ON THAT DAY? NO, YOU DIDN'T.

10 DID YOU HEAR ANYBODY COME IN HERE AND SAY WELL, IF  
11 SOMETHING ELSE HAD HAPPENED THAT SHE COMPLAINED ABOUT, THEN  
12 YOU CAN'T WRITE ABOUT SOMETHING THAT SHE ACTUALLY DID. NO ONE  
13 SAID THAT EITHER BECAUSE THAT'S LUDICROUS. IF YOU DID  
14 SOMETHING THAT WAS WRONG AND SOMETHING THAT WAS DANGEROUS AND  
15 SOMETHING THAT YOU KNEW SHE SHOULDN'T HAVE DONE, IT'S  
16 APPROPRIATE TO HAVE SOMEONE TALK TO YOU ABOUT IT AND IT'S  
17 APPROPRIATE TO DOCUMENT IT IN THIS INSTANCE AS A COACHING.  
18 AND TO SAY THAT SOMEHOW BECAUSE SOMETHING ELSE HAD HAPPENED  
19 BEFORE THAT IS TO DEFY LOGIC. WHY WOULD I NOT WRITE THIS? IT  
20 HAPPENED. AND I AM GOING TO POINT OUT THIS IS NOT SOMETHING  
21 WHERE SOMEONE SET A TRAP FOR HER BECAUSE WHEN YOU LOOK AT THIS  
22 SHE SAYS SHE CAME TO THE STL OFFICE AND REPORTED IT. THIS IS  
23 NOT A TRAP. YOU ARE GOING TO HEAR THE TESTIMONY IN THIS CASE,  
24 SHE MADE THE HUMAN ERROR MISTAKE WHEN SHE DIDN'T LOOK OR USE A  
25 FLASHLIGHT SO THAT SHE COULD SEE WHAT SHE WAS DOING BEFORE SHE

1       STARTED TURNING THAT VALVE. AND YOU WILL ALSO HEAR THAT IT  
2       WAS HER THAT CAME IN AND INITIALLY SAID THAT SHE HAD TURNED IT  
3       OFF WHEN IN FACT SHE HAD NOT. AND THEN CONCEDED THAT SOMEBODY  
4       ELSE CAME BEHIND HER AND REMEDIED THE PROBLEM THAT SHE HAD  
5       MADE.

6           IS CAMERON CURRAN NOT SUPPOSED TO DESCRIBE THAT OR WRITE  
7       ABOUT THAT? IS THERE SOME MAGIC RULE THAT SAYS YOU CAN'T DO  
8       THIS NOW BECAUSE SHE'S TALKED ABOUT ACID?

9           NO. THERE IS NO RULE LIKE THAT. SHE SAID SHE WAS TIRED  
10      AND DIDN'T THINK ABOUT WHAT SHE WAS DOING. IN A PLACE AS  
11      DANGEROUS AS A REFINERY THAT IS COMPLETELY UNACCEPTABLE. IT  
12      IS UNACCEPTABLE.

13          HE TALKED ABOUT SCHEDULE TO WORK ON JULY 17. IF THIS  
14      HAPPENED AND THERE'S NO DISPUTE THAT IT HAPPENED, IS HE NOT  
15      SUPPOSED TO WRITE IT? I DON'T UNDERSTAND THAT. IT HAPPENED.  
16      THERE IS NO DISPUTE. WAS SHE SET UP? WAS THIS A SETUP? NO,  
17      THIS IS NOT A SETUP. YOU HEARD CAMERON CURRAN. HE CALLS HER  
18      IN AND ASKS HER HOW IT WENT. AND THEN SHE SAYS SHE DIDN'T  
19      SHOW. THEN HE SAYS LET'S TALK ABOUT IT IN MY OFFICE. NOT OUT  
20      IN THE PUBLIC, IN MY OFFICE SO THEY CAN TALK ABOUT IT. IS HE  
21      NOT SUPPOSED TO DESCRIBE THIS? AND THEN WHEN SHE COMES IN AND  
22      SAYS WHERE IS THE EMAIL TO ME? OF COURSE, HE WAS  
23      FLABBERGASTED BY THAT HE TOLD YOU THAT. THIS HAD NEVER  
24      HAPPENED TO HIM BEFORE. HAVE YOU HEARD ANY TESTIMONY IN THIS  
25      CASE THAT HAPPENED ALL THE TIME? NO, YOU HAVE NOT HEARD THAT



1 BECAUSE IT DOESN'T EXIST.

2 AND THEN WE GET TO THE DRAEGER TUBES. NOW, I'M SITTING  
3 HERE THINKING ABOUT, OKAY, IF I OPENED UP A DRAEGER TUBE AND I  
4 BROKE THE TUBE GLASS ENDS OFF AND I USED IT AND I KNEW EXACTLY  
5 WHAT THE PROVENANCE WAS, MEANING WHAT AT ALL TIMES HAPPENED  
6 WITH THAT TUBE, OKAY, MAYBE I CAN USE IT AGAIN BECAUSE YOU  
7 KNOW WHAT? I KNOW WHAT HAPPENED WITH IT. PICK ONE UP OFF THE  
8 FLOOR, OFF THE GROUND WHERE YOU KNOW NOTHING ABOUT IT. YOU  
9 DON'T KNOW WHAT HAS HAPPENED WITH IT. YOU DON'T KNOW IF  
10 ANYBODY HAS DONE ANYTHING WITH IT. YOU DON'T KNOW WHY THEY  
11 DIDN'T USE IT, WHY IT WAS LEFT THERE AND YOU DECIDE, OH, YOU  
12 CAN USE ONE FOR TEN TIMES.

13 AND YOU NOW DECIDE TO USE THIS THING THAT YOU DON'T KNOW  
14 ANYTHING ABOUT AND YOU START MAKING MOVEMENTS WITH IT AND YOU  
15 START DICTATING WHAT IS GOING TO HAPPEN IN A REFINERY WITH IT  
16 AND YOU ARE PUTTING YOURSELF AND EVERYBODY ELSE AT RISK. TO  
17 SUGGEST THAT THAT IS A PROPER WAY TO WORK IN A DANGEROUS  
18 ENVIRONMENT LIKE THAT DEFIES LOGIC AND THOSE WHO WERE IN  
19 CHARGE AND THOSE WHO ARE RESPONSIBLE LOOK AT THIS AND THEY SAY  
20 THAT'S ABSURD, BECAUSE IT IS. AND IT DOESN'T TAKE SOMEONE  
21 WITH SKILL AND KNOWLEDGE TO KNOW THAT THAT'S ABSURD. WE ALL  
22 KNOW THAT'S ABSURD BECAUSE WE ALL KNOW WE WOULDN'T DO THAT.

23 TUESDAY, I TOLD YOU THEN, DID THEY JUST SORT OF WRITE THIS  
24 STUFF UP AND NOT TALK TO HER? NO, THEY DIDN'T DO THAT. THEY  
25 WENT AND TALKED TO HER. CAMERSON, GUY, MS. NEWTON, NICK

1 BACKENS.

2 SHE DID MENTION FAIRNESS BUT I WANT YOU TO SEE THE CONTEXT  
3 IN WHICH SHE MENTIONS FAIRNESS. SHE SAID IT ISN'T FAIR THAT  
4 OTHER PEOPLE CAN COME IN LATE AND NOT GET WRITTEN UP IF THEY  
5 BRING IN DONUTS. YOU WOULD THINK IF THIS WAS ABOUT GENDER,  
6 SHE WOULDN'T BE TALKING ABOUT DONUTS. SHE WOULD BE SAYING  
7 BECAUSE OF THEIR GENDER. BUT NO, SHE IS SAYING FAIRNESS  
8 BECAUSE SOME PEOPLE BRING IN DONUTS AND SOME PEOPLE DON'T.  
9 AND THAT IS WRITTEN AND THAT WAS WRITTEN BEFORE THIS LAWSUIT  
10 STARTED. THAT WAS WRITTEN BY THOSE INDIVIDUALS WHO WERE THERE  
11 INTERVIEWING HER, AND NO ONE HAS COME INTO THIS COURTROOM AND  
12 TESTIFIED THAT THAT IS NOT WHAT SHE SAID. SHE DIDN'T EVEN  
13 COME IN HERE AND SAY THAT IS NOT WHAT I SAID.

14 SO WHEN WE START TALKING ABOUT FAIRNESS, FAIRNESS IS THOSE  
15 WHO BRING IN DONUTS AND THOSE WHO DO NOT. I AM GOING TO TELL  
16 YOU WHERE IT SOMETIMES BECOMES SOMETHING OTHER THAN THAT.  
17 THAT IS WHAT HAS HAPPENED HERE. THAT IS EXHIBIT 554. LOOK AT  
18 IT. YOU WILL SEE IT. IT IS THERE, DONUTS.

19 NOW ONCE MR. PEREZ WAS TOLD WHAT HAD HAPPENED IN THE  
20 INTERVIEW, DID HE THEN SAY OKAY, I'M DONE. NO, HE DIDN'T DO  
21 THAT. YOU HAVE A PLETHORA OF EMAILS WHERE HE ATTEMPTS TO FIND  
22 OUT WHAT HAPPENED. THIS IS WHAT I TALKED ABOUT TOO.

23 AND THEN EXHIBIT 556, HE COMES UP WITH A SUMMARY. HE  
24 SAID, BASED UPON MY LOOKING AT THE GATE LOG REPORTS -- AND WHY  
25 IS HE LOOKING AT THE GATE LOG REPORTS? BECAUSE THAT IS ALL

## CLOSING ARGUMENT - LAFAYETTE

1       THEY'VE GOT TO DETERMINE WHEN SOMEONE WALKED INTO THAT  
2       REFINERY, THE GATE LOG REPORT. IT IS ACTUALLY WHEN THEY WENT  
3       INTO SOMEPLACE ACROSS THE STREET FROM THE REFINERY TO GET INTO  
4       THE REFINERY. THAT IS THE GATE LOG REPORT. NO ONE IS COMING  
5       AND OFFERED TO YOU SOME ALTERNATIVE OR BETTER WAY OF LOOKING  
6       AT THIS STUFF. IT IS THE GATE LOG REPORT. THAT'S WHAT HE  
7       DID. THAT'S WHAT HE LOOKED AT. THAT'S WHAT HE USED.

8       HE SAYS ON JULY 22, CIARA CAME IN TURNSTILES AT 6:18.  
9       THAT'S LATE. FISCHER STARTED CLASS AT 6:00 A.M WHICH IS  
10      CONSISTENT WITH WHAT HE SAW ON THE OTHER GATE LOGS. OUT OF  
11      THE SIX TIMES CIARA CAME IN PAST 6:15, SHE WAS MARKED TARDY  
12      TWICE. SIX. HE NOTED SIX IN THE GATE LOGS, AND YOU HAVEN'T  
13      HEARD ANYBODY COME INTO THIS COURTROOM AND TESTIFY THAT THE  
14      GATE LOGS DIDN'T SHOW SIX. NO ONE CAME IN HERE AND COUNTERED  
15      THAT. THAT IS UNDISPUTED TESTIMONY, NOT EVEN THE PLAINTIFF  
16      DISPUTED THAT.

17      SO STOP. WHAT DOES THAT MEAN? THAT MEANS THAT JEFF  
18      FISCHER WHO SHE'S ACCUSED WAS ACTUALLY IN A POSITION TO WRITE  
19      DOWN SIX INDIVIDUAL TIMES THAT SHE HAD COME IN AFTER 6:15 AND  
20      HE DID NOT DO IT, ONLY MARKED TWO.

21      CIARA STATED THAT OTHER TRAINEES CAME IN LATE AND DIDN'T  
22      GET WRITTEN UP. SHE SAID IT ISN'T FAIR THAT OTHER PEOPLE CAN  
23      COME IN LATE AND NOT GET WRITTEN UP IF THEY BRING IN DONUTS.  
24      THERE IS DONUTS AGAIN. IT'S NOT GENDER. IT'S DONUTS. THIS  
25      STATEMENT IS NOT CONSISTENT WITH THE OTHER -- WITH THE OTHER

1 THREE NEW HIRE GATES (SIC) .

2 WHAT ELSE? HE THEN CREATED A SUMMARY. THERE IS MUCH TO  
3 SAY ABOUT THIS APRIL 7TH DATE. BUT WHAT DID HE DO? HE NOTED  
4 IT HERE. HE NOTED RIGHT THERE TARDY ON TIME CARD, BELIEVE  
5 IT'S A DATE TYPO. WHY? BECAUSE THE NEXT DAY, THE 8TH, SHE'S  
6 ACTUALLY LATE AT 6:46 A.M. THAT'S WHY. I KEPT HEARING IT  
7 WASN'T ON THE 7TH, IT WASN'T ON THE 7TH, IT WASN'T ON THE 7TH,  
8 AND THAT IS BECAUSE IT WAS ON THE 8TH. AND YOU SEE IT NOW.  
9 AND THIS HASN'T BEEN DISPUTED EITHER. HASN'T BEEN ANYBODY  
10 TAKE THE STAND AND SAY IT'S NOT TRUE, BECAUSE IT IS TRUE.

11 THEN HE WENT ON. HE WROTE ABOUT THE BAKER TANK FILE, THE  
12 DRAEGER TUBE, DOCUMENT COACHING AND PERFORMANCE. HE COVERED  
13 EVERYTHING THAT HE WAS AWARE OF AS OF THIS DATE TO TRY AND  
14 FIND OUT IF THERE WAS ANY VALIDITY TO ANYTHING THAT THE  
15 PLAINTIFF HAD SAID. HE COVERED IT ALL. AT THIS POINT IN  
16 TIME, THERE IS NO COMPLAINT HERE ABOUT ANYTHING OTHER THAN  
17 DONUTS.

18 NOW, AUGUST 1, HE WRITES AN EMAIL. WHAT DOES HE WRITE IN  
19 THIS EMAIL? I DISCUSSED WITH CIARA THAT WE WILL BE OUT  
20 TOMORROW AT 9:00 A.M. TO DISCUSS THE FINDINGS OF THE  
21 INVESTIGATION AND WE WILL BE LOOKING INTO HER ALLEGATION OF  
22 BEING SINGLED OUT AND TREATED DIFFERENT. SHE HAS NOTES SHE  
23 HAS BEEN TAKING OF INEQUALITY AND SHE WILL BRING IT. THANK  
24 YOU. THAT'S AUGUST 1.

25 NOW, WHAT DO WE KNOW ABOUT AUGUST 1? WE KNOW THAT

1 MS. NEWTON ACTUALLY HAS SOME NOTES ON AUGUST 1. WE KNOW THAT  
2 BECAUSE SHE TOLD US SHE HAD SOME. SO THAT VERIFIES EXACTLY  
3 WHAT MR. PEREZ WROTE. I ASKED HER, IN THIS TRIAL, ABOUT  
4 WHETHER -- ABOUT THOSE NOTES. MADAME COURT REPORTER HAS BEEN  
5 GRACIOUS ENOUGH TO PROVIDE SOME OF THE TESTIMONY HERE BUT RELY  
6 UPON YOUR OWN MEMORY, NOT WHAT I SAY AND NOT WHAT I'M GOING TO  
7 READ TO YOU. SHE PROVIDED SOME TESTIMONY TO US ABOUT THESE  
8 NOTES; AND WHAT DID WE LEARN FROM THESE NOTES? THAT THE  
9 PLAINTIFF ACTUALLY SAID THAT SHE HAD NOTES AND THAT THE  
10 NOTES -- HERE'S THE QUESTION:

11 "ARE THE NOTES THAT YOU'VE SHOWN ME TODAY THE ONLY  
12 ONES YOU HAVE THAT YOU'VE TAKEN" -- I HAD TO READ  
13 THIS FROM HER DEPOSITION -- AND SHE SAID "YES".

14 AND THEN THE QUESTION:

15 "SO, IN YOUR MIND, DO YOU CONSIDER THOSE NOTES OF  
16 INEQUALITY?

17 AGAIN, SHE SAID "YES".

18 SO THEN I ASKED HER:

19 "DID YOU GIVE THOSE NOTES TO CHRISTINE LAYNE AND ERIC  
20 PEREZ?"

21 AND SHE SAYS "NO".

22 AND THEN I ASKED HER:

23 "MY QUESTION IS, THERE'S NOTHING IN ANY OF YOUR NOTES  
24 THAT SPECIFICALLY STATE THAT YOU WERE BEING TREATED  
25 DIFFERENTLY BECAUSE YOU ARE A WOMAN?"

1           AND HER ANSWER AGAIN WAS "CORRECT".

2           SO HER NOTES OF INEQUALITY THAT SHE TALKED ABOUT ON  
3           AUGUST 1, THAT SHE CREATED ON AUGUST 1, THAT SHE PROMISED  
4           MR. PEREZ THAT SHE WOULD BRING TO THE MEETING ON AUGUST 2,  
5           THOSE NOTES OF INEQUALITY DON'T MENTION BEING TREATED  
6           DIFFERENTLY BECAUSE SHE'S A WOMAN.

7           THAT'S -- AND WHEN YOU LOOK AT THAT DOCUMENT, YOU WILL SEE  
8           THERE IS NOTHING IN IT THAT SAYS SHE IS BEING TREATED  
9           DIFFERENTLY BECAUSE SHE IS A WOMAN BECAUSE IT DIDN'T HAPPEN.

10          SO NOW, AUGUST 2, MR. PEREZ SHOWS UP. THERE'S RAY JONES,  
11          NICK BACKENS, CHRISTINE LAYNE, MR. PEREZ. RAY JONES, HE'S HER  
12          ADVOCATE. IF ANYBODY WAS TO COME INTO THIS COURTROOM AND TO  
13          VERIFY THAT AT THIS MEETING SHE ACTUALLY SAID THAT SHE THOUGHT  
14          SHE WAS BEING TREATED DIFFERENTLY BECAUSE SHE IS A WOMAN, IT  
15          WOULD HAVE BEEN HER ADVOCATE, HER UNION ADVOCATE. BUT THAT IS  
16          NOT WHAT HE SAID.

17          FIRST HE SAYS, WE'LL GO BACK AND TELL THEM THAT YOU WOULD  
18          LIKE AN OPPORTUNITY TO DISCUSS WHAT WAS WITNESSED WITH THE  
19          PEOPLE WHO WERE THERE BEFORE MAKING A NORMAL COMPLAINT AND  
20          MAYBE TAKE YOUR LONG CHANGE AND MAYBE ANOTHER SET AND WE CAN  
21          GET THAT GOING.

22          NOW AGAIN, MADAME COURT REPORTER WAS GRACIOUS ENOUGH TO  
23          GIVE ME SOME TESTIMONY. THIS IS WHAT I THOUGHT I HEARD, MAYBE  
24          YOU DID TOO. BUT LET'S LOOK AT THIS FOR A SECOND. LONG  
25          CHANGE. LONG CHANGE WE NOW KNOW WHEN IT WAS AND THAT WAS

## CLOSING ARGUMENT - LAFAYETTE

1 ABOUT TO END, AND THAT WAS AUGUST 29.

2 SO NOW HE'S SAYING THAT HE TOLD MS. NEWTON THAT THEY ARE  
3 GOING TO WAIT, SHE IS GOING TO TALK TO PEOPLE AND SHE IS GOING  
4 TO COME BACK AFTER THE LONG CHANGE AND MAYBE PROVIDE  
5 SOMETHING. THAT IS WHAT HER ADVOCATE SAID. HE TOLD HER.

6 "I RECALL IS WHAT I SAID TO MS. LAYNE AND THE OTHER  
7 PEOPLE AT THE TABLE WAS THAT CIARA WOULD FEEL MORE  
8 COMFORTABLE HAVING AN OPPORTUNITY TO TALK WITH HER  
9 COWORKERS BEFORE NAMING NAMES AND DRAGGING THEM INTO  
10 THIS."

11 NOW WHOSE TESTIMONY IS THAT CONSISTENT WITH? THAT'S  
12 CONSISTENT WITH THE TESTIMONY OF MS. LAYNE AND MR. PEREZ.  
13 THAT IS INCONSISTENT WITH THE TESTIMONY OF MS. NEWTON, WHO  
14 SAYS THAT SHE WAS TOLD TO STOP. NOW YOU SEE HER ADVOCATE  
15 SAYING THAT IS NOT WHAT HAPPENED HERE AT ALL.

16 WHAT HAPPENED HERE IS THAT HE AND MS. LAYNE MADE A -- HE  
17 AND MS. NEWTON MADE A CONSCIOUS DECISION, AND THE CONSCIOUS  
18 DECISION WAS TO HAVE HER TALK TO PEOPLE AND COME BACK SO THAT  
19 SHE COULD NAME NAMES BECAUSE AT THIS POINT SHE HAS NOT NAMED  
20 ANY NAMES. SHE HAS NOT IDENTIFIED ANY PEOPLE. SHE HAS NOT  
21 IDENTIFIED ANY EVENTS. SHE HAS GIVEN THEM NOTHING TO  
22 INVESTIGATE. AND THEY ARE -- HIS TESTIMONY IS BASICALLY  
23 ACKNOWLEDGING THAT AND HIS TESTIMONY IS SAYING THEY ARE GOING  
24 TO GIVE IT TO US LATER. THAT'S WHAT HE SAID.

25 NOW, WHY WAS HE THERE IN THE FIRST INSTANCE? THIS IS

1 TELLING. HE SAID HE HAD SPOKEN TO MR. NICK BRACKENS AND HE  
2 SAID TO THEM, HE TOLD ME HE WAS SCARED THAT THAT MEETING WAS  
3 GOING TO TURN INTO A TERMINATION MEETING AND HE FELT LIKE HE  
4 NEEDED SOME HELP.

5 WHAT IS THAT? THAT IS AN ACKNOWLEDGMENT BY THE UNION THAT  
6 THE CONDUCT THEY HAD ALREADY HEARD OF ON THE AUGUST 22ND  
7 MEETING WAS SUFFICIENT EVIDENCE TO ACTUALLY START TALKING  
8 ABOUT TERMINATION AND THAT IS WHY THEY SENT IN THE BIG GUN,  
9 RAY JONES, TO BE THERE TO HELP OUT.

10 BUT THAT WAS STAYED OFF, WAITING FOR HER TO GET THE  
11 INFORMATION THAT SHE AND MR. JONES HAD PROMISED. WAS IT EVER  
12 FORTHCOMING? ABSOLUTELY NOT. INSTEAD WHAT YOU GET IS A  
13 SHIFTING OF NARRATIVES. SHE SHOULDN'T HAVE TO TELL THEM  
14 SOMETHING. THEY ALREADY HAVE ENOUGH TO DO IT.

15 I AM CONFUSED. THEN WHY IS RAY JONES SAYING THIS? IF  
16 THESE PEOPLE ALREADY HAVE ENOUGH, WHY IS HER ADVOCATE SAYING  
17 SOMETHING DIFFERENT? AND HE'S DOING THAT BECAUSE HE KNOWS  
18 THEY DON'T HAVE ENOUGH BECAUSE SHE HASN'T TOLD THEM YET. IT'S  
19 A SHIFTING NARRATIVE. DEFLECTIVE NARRATIVE. THAT IS WHAT WE  
20 ARE HEARING HERE.

21 AUGUST 29, ERIC PEREZ DOESN'T WORK IN THE SAME BUILDING AS  
22 DOES SHE. SO ON AUGUST 29, HE MAKES A SPECIAL EFFORT TO GO TO  
23 HER WORK SITE TO MEET WITH HER, TO SEE NOW AFTER THE LONG  
24 CHANGE IF HE'S GOING TO GET SOME INFORMATION FROM HER.

25 AND HE WRITES AN EMAIL. IN THIS EMAIL HE PUTS TWO THINGS



## CLOSING ARGUMENT - LAFAYETTE

1 IN HERE. THE FIRST THING HE PUTS IN HERE THAT I WANT TO TALK  
2 ABOUT IS HE SAYS I TALKED TO CIARA TODAY ABOUT THE ACCUSATION  
3 OF NOT BEING TREATED FAIRLY AND SHE SAID SHE HAS NOT TALKED TO  
4 THE OTHER NEW HIRES TO GET THEIR OKAY TO BE INTERVIEWED. I  
5 TOLD HER WE NEED TO INVESTIGATE IN A TIMELY MANNER IF SHE IS  
6 ACCUSING OTHERS OF NOT TREATING HER FAIRLY. SHE SAID SHE WILL  
7 SEND WHAT SHE HAS IN AN EMAIL TO ME AND HR. NEVER SAW THAT  
8 EMAIL AND HE DIDN'T EITHER BECAUSE IT NEVER CAME.

9 I ALSO OFFERED HER MY OFFICE IF SHE WANTS TO TYPE THAT  
10 EMAIL IN PRIVATE. I TOLD HER IF WE DON'T GET THIS, WE CAN'T  
11 HAVE A THOROUGH INVESTIGATING. HE HAS NOW DONE ALL HE CAN TO  
12 TRY TO GET THIS INFORMATION FROM HER. HE IS EXPLAINING  
13 EVERYTHING AND IT IS STILL NOT FORTHCOMING.

14 NOW, DID MR. RAY JONES SPEAK ABOUT THIS TOO? YES. HE  
15 SAID HE WENT TO HER AND ASKED HER ABOUT THIS, ASKED HER IF SHE  
16 EVEN PROVIDED SOMETHING TO THE UNION FOR THE UNION TO WORK  
17 WITH AND SHE TOLD HIM NO.

18 WHY? BECAUSE THERE WASN'T ANYTHING. THIS IS WHAT WE ARE  
19 COMING UP TO. AS WE ARE COMING UP TO THE END OF HER  
20 PROBATIONARY PERIOD, THERE ISN'T ANYTHING AND SHE'S NOT GIVING  
21 IT TO US BECAUSE THERE ISN'T ANYTHING.

22 SEPTEMBER 17 THROUGH THE 20TH, WHEN MR. PEREZ IS UNABLE TO  
23 GET ANYTHING FROM HER, DOES HE STOP? NO, HE DOESN'T STOP. HE  
24 THEN GOES OUT -- AND YOU WILL SEE THEM -- THERE IS A PLETHORA  
25 OF EMAILS HE SENDS TO PEOPLE. HE INTERVIEWS MR. METCALF AND

## CLOSING ARGUMENT - LAFAYETTE

1 HE INTERVIEWS MR. CURRAN AND HE INTERVIEWS MR. FISCHER. HE  
2 INTERVIEWS THE PEOPLE THAT HE KNOWS ABOUT AND HE DOESN'T HAVE  
3 ANYTHING. AND HE CAN'T SHOW ANYTHING BECAUSE THERE'S NOTHING  
4 THERE. SO THEN WHAT DOES HE DO?

5 ON AUGUST -- ON SEPTEMBER 8, REALIZING THAT THE TIME FOR  
6 ALL THE PROBATIONARY PEOPLE IS COMING UP, HE SENDS OUT AN  
7 EMAIL AND HE SAID, OKAY, RATE THEM. RATE THEM. ONE TO FIVE.  
8 MR. CURRAN GIVES HER NOT COMPLIMENTARY ASSESSMENTS. AND HE  
9 SAYS I'M AFRAID THAT SHE WILL HURT HERSELF OR SOMEONE ELSE OR  
10 POSSIBLY CAUSE A PROCESS INCIDENT. I HAVE LOST SLEEP AT NIGHT  
11 FROM CONCERNS AS HER TSTL FEARING THAT SOMETHING BAD WILL  
12 HAPPEN. HOW BAD WAS IT FOR HIM? HE WENT TO THE DOCTOR. HE  
13 WENT TO HIS DOCTOR.

14 NOW THIS IS WHERE WE GO BACK AGAIN. YOU SAW MS. DEANNA  
15 MARTINEZ IN TODAY. MS. DEANNA MARTINEZ CAME IN TODAY AND SHE  
16 TESTIFIED WHAT SHE SAW. DID SHE SEE CAMERON CURRAN  
17 DISRESPECTING HER? NO. DID SHE SEE CAMERON CURRAN NOT  
18 PROVIDING HER ASSISTANCE? NO. DID SHE SEE CAMERON CURRAN  
19 DOING ANYTHING TO HER THAT WAS INAPPROPRIATE? SHE DIDN'T SAY  
20 ANYTHING LIKE THAT, DID SHE?

21 SHE SAID ON THE OTHER HAND SHE SAW TEAMMATES HELPING HER,  
22 SHE SAW CAMERON CURRAN SHOWING HER, TRYING TO PROTECT HER.  
23 AND YOU HEARD A COMMENT TODAY, IT'S IN THE BETTER INTEREST OF  
24 ALL TO DO THAT BECAUSE IF SHE KNOWS, WE DON'T GET INJURED.

25 YOU SEE, THIS IS NOT A WORKPLACE WHERE IT'S A PIECE OF

## CLOSING ARGUMENT - LAFAYETTE

1 PAPER AND YOU SET A TRAP FOR SOMEONE. THIS IS A WORKPLACE IF  
2 YOU SET TRAPS FOR PEOPLE? PEOPLE DIE. THAT'S NOT LOGICAL  
3 THAT PEOPLE ARE SETTING TRAPS IN A DANGEROUS WORKPLACE. THEY  
4 RUN THE RISK OF KILLING THEMSELVES. THAT'S NOT LOGICAL. IT'S  
5 JUST NOT.

6 MR. METCALF'S RATINGS. MR. METCALF GAVE HER A TWO, A TWO,  
7 AND A TWO. NOW, I SAID BEFORE, THIS IS NOT ABOUT WHETHER OR  
8 NOT THERE WAS JUST CAUSE TO TERMINATE HER. THERE IS, AND  
9 WE'LL TALK ABOUT THAT. BUT IT'S NOT. THE ISSUE HERE IS  
10 DISCRIMINATION. AND THUS FAR I HAVEN'T HEARD ANYTHING THAT  
11 SOUNDS LIKE DISCRIMINATION AND THERE WON'T BE.

12 I'VE HEARD THAT THERE WAS SOMEHOW SOME PRESSURE PUT ON  
13 MR. METCALF TO CHANGE HIS ASSESSMENT. YOU SEE, THAT IS AN  
14 ASSUMPTION THAT PEOPLE LAY AT THE FEET OF EVERYBODY WHO GOES  
15 TO WORK FOR SOMEBODY ELSE. THEY MAKE THIS ARGUMENT SUGGESTING  
16 WE LOSE OUR MORALS, WE LOSE OUR COMMON COMPASS, WE LOSE WHO WE  
17 ARE WHEN -- WHEN WE GO TO WORK FOR SOMEONE AND SAY, OH, I'M  
18 JUST THAT NOW, WHATEVER THEY TELL ME TO DO, THAT IS WHAT I'M  
19 GOING TO DO, MY MORALS HAVE BEEN THROWN OUT THE DOOR.

20 AND MR. METCALF DENIED THE EXISTENCE OF SOMETHING LIKE  
21 THAT WITH HIM AND HE TOLD YOU THAT HE HAD PUSHED BACK CAN IN  
22 THE PAST WITH MR. PEREZ. AND HE HAS AND THERE IS NO DISPUTE  
23 ABOUT THAT.

24 SO WHAT WAS THE ISSUE OF THE ALIGNMENT? LET'S ISSUE --  
25 LET'S ALIGN ON HER 240 REVIEW. I PASTED YOUR RESPONSE BELOW

## CLOSING ARGUMENT - LAFAYETTE

1 ON HER RATING. THERE IT IS RIGHT THERE. AND I'M NOT ASKING  
2 YOU TO CHANGE ANYTHING BUT ME AND YOU NEED TO BE ALIGNED ON  
3 HER PERFORMANCE BEHAVIOR SINCE SHE HAS BEEN EMPLOYED. NOT  
4 JUST WITH CIARA, BUT THIS APPLIES TO ALL NEW HIRES.

5 HE IS SEEING SOMETHING THAT IS INCONSISTENT, THE REVIEW,  
6 THE ASSESSMENT AND THIS RATING. HE WANTS TO TALK ABOUT IT.  
7 IS THAT FAIR? YES. ABSOLUTELY.

8 SEPTEMBER 21. WE GET EXHIBIT 599 AND THEREIN IS WHERE THE  
9 RECOMMENDATION IS MADE TO TERMINATE HER. IT'S THE SIX  
10 TARDIES, DID NOT WORK COMPLETE SHIFT, PERFORMANCE. SOME  
11 EXAMPLES, NOT ALL, BAKER TANK VALVE, C255 SAMPLE, HOT WORK  
12 PERMIT, BUMPING THE PUMP, BASIC KNOWLEDGE, BEHAVIORS  
13 RECOMMENDATION. ALL THAT IS WHAT MS. LAYNE WROTE AND SAID  
14 THESE ARE THE RECOMMENDATIONS AS TO WHY SHE SHOULD BE  
15 TERMINATED. THAT IS IT. THAT'S THE RECOMMENDATION.

16 NOW, AFTER THAT MR. METCALF SENDS AN EMAIL ON  
17 SEPTEMBER 23, AND IN THIS EMAIL HE SENDS ON SEPTEMBER 23, HE  
18 REFERENCES TWO EVENTS WHICH HE SAID HE HAD NOT FULLY TAKEN  
19 INTO CONSIDERATION WHEN HE INITIALLY PREPARED HIS 240  
20 ASSESSMENT AND NOW HE HAS.

21 ONE IS A PERMIT AND THE OTHER ONE IS SOMETHING THAT  
22 HAPPENED ON THE NIGHT OF SEPTEMBER 22. THEREIN LIES THE  
23 REASON WHY HIS ASSESSMENT CHANGES. IT'S RIGHT THERE IN FRONT  
24 OF US ALL. IS HE IS NOTING TWO THINGS HE HAD NOT TAKE INTO  
25 CONSIDERATION.

1 SO THEN, AND I SHOW YOU THIS BECAUSE THIS IS THE ISSUE OF  
2 THE PARALLEL TRAINING. I WANTED YOU TO SEE ONE THING ON THIS.

3 WHAT IS THE DATE? THE LAST DATE IS MAY 23RD, 2016. IT IS  
4 THE LAST DATE ANYBODY MADE. THE ISSUES WITH THE PARALLEL  
5 TRAINING WERE ALL RESOLVED BEFORE MAY 23RD 2016.

6 SO, WHERE ARE WE? THE DATE OF TERMINATION. NOT AWARE OF  
7 ANY WRONGDOING. THERE'S NO EVIDENCE THAT ANYONE WAS AWARE OF  
8 ANY WRONGDOING. PLAINTIFF HAD NOT COOPERATED AND PROVIDED  
9 NAMES OR EVENTS. HER UNION WAS EVEN NOT GETTING INFORMATION.  
10 THEY WERE ONLY AWARE OF WHAT WAS IN CHRISTINE'S EMAIL, AND AS  
11 TO THAT, PLAINTIFF TESTIFIED THAT IF BELIEVED, THAT WAS  
12 JUSTIFICATION FOR HER TERMINATION.

13 AND THIS IS WHAT WAS READ. YOU SEE, SHE REFUSED TO  
14 ANSWER -- SKATED ANSWERING WHEN I ASKED HER THIS AT TRIAL. SO  
15 I ACTUALLY READ HER DEPOSITION TESTIMONY. I ASKED THE  
16 FOLLOWING:

17 "AND IF SHE HAD -- AND IF SHE, CHRISTINE LAYNE,  
18 BELIEVED THAT THESE WERE TRUE, WOULDN'T THAT BE  
19 JUSTIFICATION FOR LETTING YOU GO?"

20 HER ANSWER WAS: YES.

21 NOW YOU HAVE NO DISPUTE THAT THE REASONS IN THAT  
22 RECOMMENDATION WERE JUSTIFICATION FOR HER TERMINATION BECAUSE  
23 PLAINTIFF AGREES. AND THAT'S HER TESTIMONY.

24 HOW CAN YOU NOW HOW CAN YOU AGREE AND NOW SAY THAT WASN'T  
25 GOOD ENOUGH? I DON'T KNOW HOW YOU DO THAT BECAUSE THAT'S HER

1 TESTIMONY. SWORN TESTIMONY. YES.

2 DID SHE DENY THE BAKER TANK? NO.

3 DID SHE DENY WHAT SHE DID WITH THE DRAEGER TUBE? NO.

4 DID SHE DENY BUMPING THE PUMP? NO.

5 THOSE THINGS SHE DIDN'T DENY EITHER. SO SEPTEMBER 29  
6 SHE'S TERMINATED.

7 NOW, FAILURE TO PREVENT. MULTIPLE AVENUES OF RELIEF IN  
8 THIS CASE. IF YOU THINK SOMETHING IS HAPPENING TO YOU, YOU  
9 HEARD THE TESTIMONY. YOU CAN GO TO YOUR CHAIN OF COMMAND, GO  
10 TO HUMAN RESOURCES, YOU CAN GO TO THE UNION, YOU CAN USE A 800  
11 NUMBER. ANY OF THOSE THINGS USED? NO. NO. NO.

12 THEN THE LAWSUIT IS FILED. AND WHEN THE LAWSUIT IS FILED  
13 IT CHANGES YOU SEE. NOW IT CHANGES. BUT ALL THIS IS ABOUT  
14 CREDIBILITY NOW. WHEN IT CHANGES AT THE TIME OF THE LAWSUIT  
15 AND IT DIDN'T EXIST THEN, YOU HAVE TO ASK YOURSELF WHY HAS IT  
16 NOW CHANGED? OKAY?

17 JUDGE INSTRUCTED ON CREDIBILITY OF WITNESSES. I WANT YOU  
18 TO FOCUS ON A COUPLE OF THINGS. THE WITNESS'S MEMORY, THE  
19 WITNESS'S MANNER WHILE TESTIFYING, THE WITNESS'S INTEREST IN  
20 THE OUTCOME OF THE CASE, OTHER EVIDENCE CONTRADICTING THE  
21 WITNESS'S TESTIMONY, THE REASONABLENESS OF THE WITNESS'S  
22 TESTIMONY IN LIGHT OF THE EVIDENCE, ANY OTHER FACTORS THAT  
23 BEAR ON BELIEVABILITY.

24 HOWEVER, THE JUDGE SAYS, IF YOU DECIDE THAT A WITNESS HAS  
25 DELIBERATELY TESTIFIED UNTRUTHFULLY ABOUT SOMETHING IMPORTANT,

## CLOSING ARGUMENT - LAFAYETTE

1 YOU MAY CHOOSE NOT TO BELIEVE ANYTHING THAT WITNESS SAID.

2 SO I'M GOING TO ASK YOU DID THAT HAPPEN HERE, WHERE  
3 SOMETHING WAS OTHER THAN A SIMPLE MISTAKE OF MEMORY? YES, IT  
4 DID. IT DID.

5 EVIDENCE THAT A WITNESS LIED UNDER OATH ON A PRIOR  
6 OCCASION MAY BE CONSIDERED, ALONG WITH ALL OTHER EVIDENCE IN  
7 DECIDING WHETHER OR NOT TO BELIEVE THE WITNESS AND HOW MUCH  
8 WEIGHT TO GIVE TO THE TESTIMONY OF THE WITNESS AND FOR NO  
9 OTHER PURPOSE.

10 SO WAS PLAINTIFF UNTRUTHFUL? LET'S LOOK. YOU MAY  
11 REMEMBER I ASKED SOMETHING ABOUT TWO EXHIBITS OF PLAINTIFF.  
12 EXHIBIT 70 AND EXHIBIT 65.

13 I ASKED:

14 "NOW, WHAT YOU DID WAS -- AS OF THE DATE THAT YOU  
15 WERE TOLD THAT YOU WERE BEING TERMINATED, YOU WERE  
16 AWARE OF ALL THE THINGS IN YOUR PD LOG, WEREN'T YOU?

17 "I BELIEVE SO.

18 AND I ASKED HER SPECIFICALLY ABOUT EXHIBIT 65. YOU SEE IT  
19 THERE? SHE TOLD ME EXHIBIT 65, THIS ONE OVER HERE, WAS THE  
20 DOCUMENT THAT SHE RECEIVED FROM RICHARD METCALF BACK IN  
21 SEPTEMBER WHEN SHE WAS STILL EMPLOYED.

22 THAT'S WHAT SHE TOLD US. SHE SAID THAT SHE THEREAFTER GOT  
23 IT AND SHE TOOK IT TO HER LAWYERS. THAT'S WHAT SHE SAID. SHE  
24 SAID THIS DOCUMENT, EXHIBIT 65, IS THE DOCUMENT THAT SHE GAVE  
25 TO HER LAWYERS THAT SHE GOT FROM RICHARD METCALF. THAT'S WHAT

1 SHE SAID.

2 AND THEN WE WERE LOOKING AT EXHIBIT 70. AND YOU HEARD  
3 CHRISTINE LAYNE TESTIFY ON FRIDAY. CHRISTINE LAYNE SAID  
4 EXHIBIT 70 IS A DOCUMENT THAT SHE SCANNED AFTER THE PLAINTIFF  
5 WAS TERMINATED AND WAS PART OF THE DOCUMENTS THAT WERE SENT TO  
6 PLAINTIFF AFTER THE PLAINTIFF WAS TERMINATED. AND SHE SAID  
7 THERE WAS AN ANOMALY THAT TOOK PLACE WHEN SHE SCANNED IT, THAT  
8 IT SCANNED ASKEW. THAT'S WHAT SHE TESTIFIED.

9 SHE'S TALKING ABOUT THIS AND THIS (INDICATING) ON THIS  
10 DOCUMENT. THAT WAS CREATED AFTER PLAINTIFF WAS TERMINATED.

11 SO I'M GOING TO ASK YOU, HOW COULD SOMETHING THAT APPEARS  
12 ON A DOCUMENT AFTER SHE WAS TERMINATED BE THE DOCUMENT THAT  
13 SHE GOT BEFORE SHE WAS TERMINATED? BECAUSE YOU SEE THAT SAME  
14 SKEWING HERE AND YOU SEE IT HERE ON THE ONE THAT SHE SAID SHE  
15 RECEIVED FROM RICHARD METCALF.

16 WHY IS THAT IMPORTANT? BECAUSE RICHARD METCALF SAYS HE  
17 NEVER GAVE IT TO HER. HE SAID HE ALWAYS GIVES THESE THINGS TO  
18 MR. PEREZ, AND HE NEVER SENDS THEM OUT UNTIL HE AND MR. PEREZ  
19 HAVE ALIGNED ON THEM.

20 THE ONLY WAY YOU CAN LOOK AT THESE TWO DOCUMENTS IS TO SAY  
21 SOMEBODY IS LYING HERE. THAT'S WILLFUL UNTRUTHFULNESS. AND  
22 THAT WILLFUL UNTRUTHFULNESS TAINTS EVERYTHING THAT THE  
23 PLAINTIFF IS SAYING IN THIS CASE. BECAUSE IF YOU CAN'T  
24 BELIEVE THIS, WHY SHOULD YOU BELIEVE ANYTHING ELSE?

25 IT'S YOUR EYES, JUST LOOK AT THEM; THEY ARE THE EXACT SAME



1 DOCUMENT, THE EXACT SAME SKEWING. SHE DIDN'T GET THIS FROM  
2 MR. METCALF. SHE GOT IT AFTER SHE WAS TERMINATED, AND THIS  
3 FILE WAS SENT TO HER.

4 THERE'S BEEN DEPOSITION TESTIMONY, AND YOU CAN CONSIDER  
5 THE SAME AS IF YOU WERE IN THIS COURTROOM. EVEN AS WE SIT  
6 HERE TODAY THERE IS NO SPECIFICS. INSTEAD WHAT WE GET ARE  
7 SOME BUZZ WORDS.

8 MALE DOMINATED. NOT MECHANICALLY INCLINED. WOMEN DON'T  
9 LAST IN OPCEN. WHAT DOES YOUR HUSBAND THINK?

10 THESE ARE MEANT TO GIVE YOU A VISCERAL REACTION. NO  
11 CONTEXT TO WHAT THESE COMMENTS ARE. NO NOTHING. JUST THROW  
12 THEM OUT THERE AT PEOPLE. JUST THROW THEM OUT THERE AND  
13 EVERYBODY WILL GET UPSET ABOUT THAT AND THEY WILL FORGET THERE  
14 ARE NO FACTS IN THIS CASE TO SUPPORT ANYTHING.

15 THAT'S WHAT THEY ARE. THAT IS WHAT THEY ARE HOPING YOU  
16 WILL DO HERE; GRAB THESE THINGS AND HAVE A VISCERAL REACTION  
17 AND GO FROM THERE WITH IT. AND I'M ASKING YOU NOT TO DO THAT.

18 MALE DOMINATED? YES. I AM NOT GOING TO SIT UP HERE AND  
19 TELL YOU THAT IN THE PAST REFINERIES HAVE ALWAYS HAD LOTS OF  
20 WOMEN THERE. THAT'S NOT TRUE AND WE ALL KNOW IT. SO TO SAY  
21 IT'S ALWAYS TRADITIONALLY MEN THERE, THAT IS TRUE. THAT'S  
22 ONLY SPEAKING A TRUTH. IT HAS BEEN THAT.

23 NOT MECHANICALLY INCLINED? SHE'S NOT, CAN YOU NOT SAY IT  
24 BECAUSE SHE'S A WOMAN? IS THAT IT? YOU HEAR CAMERON CURRAN  
25 TALKING ABOUT RIGHTY, TIGHTY. LEFTY, LUCY. I'M NOT EITHER.

## CLOSING ARGUMENT - LAFAYETTE

1 OKAY? I'M NOT EITHER. I HAVE TO PAY PEOPLE TO DO STUFF FOR  
2 ME AROUND MY HOUSE, RIGHT? BUT THAT'S WHAT HE'S TALKING  
3 ABOUT. AND HE'S TRYING TO EXPLAIN IT TO HER DEEP INTO THE  
4 PROGRAM.

5 NOW, BUZZ WORDS DON'T MEAN GENDER BIAS THOUGH.

6 SO LET'S TALK GENERALLY. YOU KNOW THE TIMELINE. JANUARY,  
7 INITIAL TRAINING, JANUARY, FEBRUARY ONBOARDING AND TRAINING  
8 WHERE SHE'S TOLD ABOUT THE EMPLOYMENT-RELATED MATTERS AND THE  
9 CODE OF CONDUCT. JEFF FISCHER, COMMENCEMENT OF A SHIFT,  
10 CAMERON CURRAN, GENERAL ONBOARDING PROP TEST.

11 I DIDN'T HEAR THAT TALKED ABOUT, BUT WHAT'S WRONG WITH  
12 TELLING SOMEONE THEY DIDN'T PASS AND COMING BACK THE NEXT DAY?  
13 NOTHING.

14 ASSIGNMENT TO OPCEN. OKAY. SOMEONE MAKES A COMMENT, BUT  
15 IT'S NOT A GENDER COMMENT. IT'S DIRECTED AT MEN AND WOMEN  
16 ALIKE. THERE'S NOTHING ABOUT THAT.

17 BEREAVEMENT LEAVE. I HEARD A LOT IN HERE ABOUT HOW HE WAS  
18 TREATING ME POORLY FOR BEREAVEMENT LEAVE. I DIDN'T HEAR IT IN  
19 THE CLOSING. WHY? BECAUSE NOW YOU'VE SEEN ALL THE EMAILS  
20 WHERE YOU SEE THAT JEFF FISCHER IS ACTUALLY TRYING TO HELP  
21 HER. HE'S TRYING TO HELP HER. HE'S COMMUNICATING WITH THE  
22 PEOPLE UP ABOVE HIM, MR. PEREZ. HE SAID THIS IS WHAT  
23 HAPPENED. I TRIED TO GET HER A TAXI. I OFFERED TO DRIVE HER  
24 MYSELF. DOES THIS SOUND LIKE SOMEONE WHO DOESN'T WANT YOU  
25 THERE? SOUNDS LIKE SOMEONE WHO DOESN'T RESPECT YOU? IS THAT

1 WHAT IT SOUNDS LIKE?

2 AND YOU DIDN'T HEAR ANY TESTIMONY THAT THOSE THINGS DIDN'T  
3 HAPPEN EITHER. WILL NOT HELP HER CATCH UP. WHO SAID THAT?  
4 PLAINTIFF SAID THAT. HE SAID HE WASN'T GOING TO HELP ME CATCH  
5 UP. I WOULD HAVE TO CATCH UP ON MY OWN. OH, STOP THAT.

6 BUT DID ANYBODY ELSE SAY THAT? PATRIK NEUMAN TESTIFIED ON  
7 FRIDAY. DID YOU HEAR IT COME OUT OF PATRIK NEUMAN'S MOUTH?  
8 NO. SAID JEFF FISCHER TOLD THEM ALL THAT THEY WERE GOING TO  
9 HAVE TO HELP HER CATCH UP. THAT'S WHAT HE SAID. JEFF SPENT  
10 TIME HELPING HER CATCH UP.

11 HOW ABOUT ODEMENA EKELEMU? JEFF WAS TOUGH, BUT SPENT TIME  
12 HELPING HER. HE SAID EVERYONE NEEDED TO HELP HER.

13 HOW ABOUT BILL WESSELMAN? HE WAS NEVER LATE. HE DIDN'T  
14 MAKE MISTAKES. WHY ARE WE GOING TO WRITE HIM UP? HE DIDN'T  
15 MAKE MISTAKES AND HE WASN'T LATE.

16 JOSE NAVARRO, DIDN'T WITNESS ANY DISCRIMINATION. DIDN'T  
17 WITNESS HARASSMENT. DIDN'T HEAR ANYTHING BIASED.

18 SO WHERE IS THIS COMING FROM? YOU SEE, THOSE ARE THE  
19 PEOPLE WHO WERE THERE. THOSE ARE THE PEOPLE WHO WERE WITH  
20 HER. WHO IS THE ONLY PERSON WHO IS SAYING SOMETHING HAPPENED  
21 HERE? IT'S THE PLAINTIFF WHO I'VE DEMONSTRATED TO YOU, I  
22 HOPE, HAS BEEN WILLFULLY FALSE IN STATEMENTS.

23 SO HOW ARE YOU SUPPOSED TO TAKE THAT AGAINST EVERYBODY  
24 ELSE WHO IS THERE WHO NEVER WITNESSED ANYTHING? THERE WASN'T  
25 ANY HARASSMENT TAKING PLACE BY MR. JEFF FISCHER. OTHERWISE

## CLOSING ARGUMENT - LAFAYETTE

1 THOSE PEOPLE WOULD BE IN THIS ROOM SAYING IT.

2 THE WHITE BOARD. OKAY. DIDN'T DO ANYTHING. YOU'VE HEARD  
3 THE WITNESSES SAY JEFF FISCHER ASKED US IF WE KNEW ANYTHING  
4 ABOUT IT, AND THEY DIDN'T. BUT HERE'S THE THING; JEFF FISCHER  
5 CAN'T FIRE, HE CAN'T HIRE, HE CAN'T EVEN WRITE STUFF IN A PD  
6 LOG. HE'S A TRAINER. HE'S A TRAINER. THAT IS WHAT HE IS.  
7 AND THAT'S THE ONLY TESTIMONY THAT -- YEAH, YOU'LL HEAR  
8 PLAINTIFF'S COUNSEL WALK UP AND SAY, AS THE SUPERVISOR, BUT HE  
9 IS A TRAINER.

10 PATRIK: DID NOT SEE IT, DID NOT HEAR IT, BELIEVES SHE WAS  
11 TREATED JUST LIKE HIM. WHY? BECAUSE THEY'RE IN THIS GROUP OF  
12 FOUR, THERE WERE TWO FAST TRACKERS AND THERE WERE TWO WHO WERE  
13 SLOWER. AND PATRIK WAS ONE OF THE SLOWER AND SHE AND HE WERE  
14 TREATED THE SAME. THAT'S THE TESTIMONY IN THIS CASE.

15 ODEMENA, DID NOT SEE IT, DID NOT HEAR IT, BELIEVES SHE WAS  
16 TREATED LIKE PATRIK. THAT'S HIS TESTIMONY. I BELIEVE SHE WAS  
17 TREATED LIKE PATRIK.

18 AND THIS ISSUE ABOUT SOMEBODY'S SON? WHAT DID MR. ODEMENA  
19 SAY? SO THAT WAS SAYING, WELL, HOW COULD PATRIK GET THE JOB  
20 WHEN THIS GUY'S SON DIDN'T GET THE JOB. THAT'S WHAT ODEMENA  
21 HEARD. WHO IS THE PERSON THAT SAID SOMETHING ABOUT PLAINTIFF  
22 COULDN'T -- PLAINTIFF TOOK SOMEBODY'S JOB. ODEMENA DIDN'T SAY  
23 THAT. THE ONLY PERSON WHO SAID THAT AGAIN IS THE PLAINTIFF.

24 PARALLEL TRAINING. IF MR. FISCHER BELIEVES THAT THE  
25 PEOPLE WHO SIGNED THESE FORMS ARE NOT SUPPOSED TO DO IT, HE'S

1 SUPPOSED TO SAY SOMETHING. AND IF HE SEES SOMEONE SIGNING HER  
2 FORM AND HE DOESN'T THINK THAT PERSON IS SUPPOSED TO BE DOING  
3 IT, HE'S SUPPOSED TO SAY SOMETHING. AND THAT'S WHAT HE DID.  
4 HOW IS THAT HARASSMENT? HOW IS THAT GENDER HARASSMENT? IT'S  
5 NOT.

6 IAN CHAMBERLAIN, WE SPOKE ABOUT HIM. SHIFT SWAP, OKAY?  
7 THEY LET HER TAKE THE SWIFT SWAP OVER MEMORIAL DAY WEEKEND.  
8 WE GET TO JULY, IT HASN'T BEEN MADE UP YET. IS ANYBODY  
9 SUPPOSED TO TALK TO HER OR IS THAT ALSO HARASSMENT BECAUSE OF  
10 HER GENDER? AND WHEN SHE DOESN'T MAKE IT UP ON THE DATES THAT  
11 SHE'S SUPPOSED TO MAKE IT UP, IS THAT HARASSMENT BECAUSE OF  
12 HER GENDER OR IS THAT SOMEONE TRYING TO DO THEIR JOB AND MAKE  
13 SURE THAT SHE IS BEING HELD ACCOUNTABLE FOR THE TIME THAT SHE  
14 GOT PAID?

15 THE ACID OVERFILL. SHE KNEW NOTHING ABOUT WHAT HAD  
16 HAPPENED. NOTHING. NOTHING. BY THE TIME SHE WEIGHED IN,  
17 OYSTER SHELL HAD BEEN PUT DOWN. THE ACID HAD BEEN  
18 NEUTRALIZED. ALL THINGS HAD BEEN DONE. ALL THINGS HAD BEEN  
19 DONE.

20 WHAT SHE SAYS IS SHE SEES ABOUT THREE DROPS ON THE SIGHT  
21 GLASS. WELL, THE WEIRD THING ABOUT THAT IS THE SIGHT GLASS  
22 AIN'T RELATED TO THE NOZZLE WHERE YOU PUT THE ACID IN. AND NO  
23 ONE SAID THERE WAS A LEAK AT THE SIGHT GLASS. NO ONE HAS SAID  
24 THAT.

25 IS SHE LOOKING AT CONDENSATION? I DON'T KNOW, BUT NO ONE

1 HAS TESTIFIED ABOUT A LEAK AT THE SIGHT GLASS. DIDN'T HAPPEN.  
2 IT IS ALL TRYING TO MISLEAD US.

3 THE BAKER TANK, WE TALKED ABOUT THAT.

4 THE BAKER TANK, SHE SPECIFICALLY SAID THAT WAS HUMAN  
5 ERROR. HUMAN ERROR. NOW, WHAT DO WE KNOW ABOUT THIS? SAME  
6 WITH THE DAVID TAPE THIS (PHONETIC). MICHAEL JOYCE. REMEMBER  
7 HIM? HE'S THE GUY WHO PREVIOUSLY WORKED AT CHEVRON AND WORKS  
8 IN THE COMMUNITY COLLEGE DISTRICT. WHAT DID HE SAY? HE SAID  
9 SOMETHING ABOUT COMPLACENCY.

10 WHAT HE SAID ABOUT COMPLACENCY WAS TELLING. HE SAID HE  
11 TALKED ABOUT COMPLACENCY WHEN PLAINTIFF APPEARED AT HIS CLASS.  
12 DID YOU --

13 "QUESTION: DID YOU DESCRIBE TO THEM COMPLACENCY CAN  
14 BE THE INDIVIDUAL OPERATOR BEING COMPLACENT IN THEIR  
15 FUNCTIONS AT THE REFINERY?

16 "ANSWER: THAT IS -- THAT COULD BE -- YES. YES.  
17 ABSOLUTELY.

18 "QUESTION: WHEN YOU TALKED TO THEM, DID YOU TELL  
19 THEM THAT COMPLACENCY CAN BE NOT PAYING ATTENTION TO  
20 DIRECTIONS?

21 "ANSWER: COULD BE. YES. SURE.

22 "QUESTION: DID YOU TELL THEM THAT COMPLACENCY CAN BE  
23 NOT PERFORMING THE PROCEDURES IN THE PROPER WAY?

24 "ANSWER: YES.

25 "QUESTION: DID YOU TELL THEM IF THEY DON'T FOLLOW

1           PROCEDURES IN THE RIGHT WAY IN A REFINERY, THEY CAN  
2           GET PEOPLE KILLED?

3           "ANSWER: THAT'S A STRONG STATEMENT, BUT ON CERTAIN  
4           LEVELS, THAT COULD BE POSSIBLE, YES.

5           "AND DID YOU TELL THEM THAT IF THEY DON'T FOLLOW THE  
6           PROCEDURES AND PEOPLE SEE IT, THEY WILL BRING IT TO  
7           THEIR ATTENTION?

8           "ANSWER: YES."

9           WHO'S COMPLACENT HERE? WHO'S COMPLACENT HERE? WHAT DID  
10          THE PLAINTIFF SAY ABOUT COMPLACENCY? SHE SAID, WHEN I ASKED  
11          HER IF THIS CONDUCT THAT SHE'S PARTICIPATING IN COULD BE  
12          VIEWED AS COMPLACENCY, SHE SAID YES.

13          SO NOW YOU'VE GOT THESE COMMENTS, AND HERE'S THE  
14          PLAINTIFF:

15          "QUESTION: AND YOU LEARNED IN THE CLASS WITH  
16          MR. JOYCE THAT COMPLACENCY IS WHAT GETS PEOPLE KILLED  
17          IN REFINERIES, RIGHT?

18          "ANSWER: YES, ONE OF THE THINGS.

19          "QUESTION: YOU UNDERSTAND THAT WHAT YOU DID MADE YOU  
20          APPEAR TO BE COMPLACENT, RIGHT?

21          "ANSWER: I UNDERSTAND IT COULD LOOK THAT WAY, YEAH."

22          OKAY. COMPLACENCY IS DANGER. SHE ADMITS SHE IS DOING  
23          STUFF THAT CREATES THE IMPRESSION OF COMPLACENCY IN A  
24          DANGEROUS SITUATION.

25          LET'S TALK ABOUT THE CLAIMS NOW. THOSE ARE THE FACTS.

1 THAT'S WHAT HAPPENED. THOSE ARE THE FACTS.

2 THESE ARE FIRST CLAIM HARASSMENT GENDER -- BECAUSE OF  
3 GENDER, GENDER DISCRIMINATION, RETALIATION FOR COMPLAINING OF  
4 GENDER DISCRIMINATION, FAILURE TO PREVENT HARASSMENT, AND  
5 RETALIATION RELATING TO WHISTLEBLOWER.

6 AS I SAID BEFORE, THAT MEANS AN EMPLOYER MAY DISCHARGE AN  
7 EMPLOYEE FOR NO REASON, OR FOR GOOD CAUSE, BAD MISTAKE,  
8 UNWISE, OR EVEN UNFAIR. NO BURDEN. I DON'T HAVE THE BURDEN  
9 AND NEITHER DOES SHELL. THE BURDEN IN THIS CASE IS  
10 PLAINTIFF'S.

11 WHEN A PARTY HAS THE BURDEN OF PROVING ANY CLAIM OR  
12 AFFIRMATIVE DEFENSE BY A PREPONDERANCE OF THE EVIDENCE, IT  
13 MEANS YOU MUST BE PERSUADED BY THE EVIDENCE THAT THE CLAIM OR  
14 AFFIRMATIVE DEFENSE IS MORE PROBABLY TRUE THAN NOT.

15 SO THIS IS THE WAY I LOOK AT IT. I DON'T HAVE A SCALE. I  
16 LOOK AT THINGS AND I SAY, IF YOU ARE SO EVENLY DIVIDED THAT  
17 YOU CAN'T TELL, THEY HAVEN'T MET THEIR BURDEN. IT'S THAT  
18 SIMPLE. IF YOU ARE IN THE AMBIGUOUS LAND AS TO SOMETHING,  
19 THEY HAVEN'T MET THEIR BURDEN. THAT'S THE WAY YOU LOOK AT  
20 THAT. AND THAT'S THE WAY I'M ASKING YOU TO LOOK AT THAT.

21 NOW, EVIDENCE CAN BE DIRECT AND CIRCUMSTANTIAL. I HAVE NO  
22 HORSE IN THAT RACE.

23 BUT LET'S TALK ABOUT THIS: HARASSMENT BASED ON GENDER.

24 IT HAS TO BE HARASSMENT BECAUSE SHE IS A WOMAN. I KNOW,  
25 WE DON'T LIKE IT. I CAN BE MEAN TO PEOPLE IN THE WORKPLACE, I



## CLOSING ARGUMENT - LAFAYETTE

1 KNOW I'VE BEEN MEAN TO PEOPLE IN THE WORKPLACE, BUT IF IT'S  
2 NOT BECAUSE OF THEIR RACE, OR THEIR GENDER, OR THEIR NATIONAL  
3 ORIGIN OR THEIR AGE AND SO ON, IT IS FINE. IT AIN'T FINE, BUT  
4 IT'S NOT -- IT'S NOT ILLEGAL. IT'S NOT ILLEGAL.

5 SO I'M GOING TO ASK YOU, IS THERE ANYTHING THAT HAPPENED  
6 TO HER BECAUSE, AS HARASSMENT, BECAUSE SHE'S A WOMAN? AND I'M  
7 GOING TO REMIND YOU OF HER TESTIMONY.

8 SO SHE SAYS THAT MR. FISCHER WAS NOT A GOOD BOSS. LET ME  
9 SAY THIS.

10 "DID YOU EVER ASK TO SIT DOWN WITH HIM AND TALK WITH  
11 HIM?

12 FIRST SHE SAID "NO". THEN I HAD TO READ THE DEPOSITION  
13 TRANSCRIPT.

14 "DID YOU EVER ASK TO SIT DOWN WITH HIM AND TALK WITH  
15 HIM?

16 "YES.

17 "HE GAVE YOU THE TIME, DIDN'T HE?

18 "ANSWER: YES.

19 "NOW, WHEN YOU ASKED TO SIT DOWN AND TALK WITH HIM,  
20 WERE YOU DOING IT TO MAKE SURE YOU UNDERSTOOD A  
21 PARTICULAR CONCEPT?

22 "YES.

23 "UP UNTIL THE POINT IN TIME WHEN YOU HAD QUESTIONS  
24 FOR HIM, OKAY, HE WOULD TAKE THE TIME TO SIT DOWN  
25 WITH YOU AND GO OVER THE MATERIAL?

## CLOSING ARGUMENT - LAFAYETTE

1 "ANSWER: YES. THAT WAS HIS JOB.

2 "QUESTION: AND THAT IS WHAT HE DID?

3 "ANSWER: YES.

4 "QUESTION: AND DID HE EXPLAIN THE CONCEPT TO YOU?

5 "ANSWER: YES."

6 THAT'S INCONSISTENT WITH THE WAY THEY'VE TRIED TO PORTRAY  
7 THIS CASE, THAT HE WASN'T HELPFUL. SHE DIDN'T GET GOOD  
8 LEARNING AND TRAINING. THAT'S NOT WHAT HAPPENED HERE.

9 "DID HE EVER, IN YOUR PRESENCE, EXPRESS FRUSTRATION  
10 WHEN YOUR COWORKERS DIDN'T HAVE THE ANSWER?

11 "ANSWER: YES."

12 SO WHEN SHE SAYS HE'S FRUSTRATED WITH HER, HE'S FRUSTRATED  
13 AT GUYS, TOO. THAT'S TREATING EVERYBODY THE SAME. THAT'S  
14 TREATING EVERYBODY THE SAME. THAT IS NOT GENDER ISSUE.

15 NOW, SHE SAYS --

16 "QUESTION: THE UNION TOLD YOU THAT JEFF FISCHER  
17 DIDN'T HAVE THE AUTHORITY TO FIRE, RIGHT?

18 "ANSWER: AUTHORITY TO WALK ME TO THE GATE?

19 "QUESTION: WHICH IS FIRING SOMEONE, RIGHT?

20 "ANSWER: YEAH."

21 SO ON THE ISSUES OF HARASSMENT.

22 "IT WOULD BE ACCURATE THAT YOU DIDN'T HAVE ANY  
23 CONVERSATION IN ANY WAY WITH ANYBODY AT SHELL THAT IN  
24 ANY WAY FORMULATED TO SEX?

25 "ANSWER: YEAH, NOBODY CALLED ME NAMES."

1 ANSWER -- SHE NEVER SAID SHE DID.

2 NEXT QUESTION:

3 "WOULD IT BE ACCURATE THAT THERE WAS NO COMMENT MADE  
4 IN THAT MEETING", AUGUST, JULY 22, "THAT YOU WERE  
5 BEING TREATED DIFFERENTLY SPECIFICALLY BECAUSE YOU  
6 WERE A WOMAN?

7 "I DEFINITELY NEVER SAID I'M BEING TREATED  
8 SPECIFICALLY BECAUSE I AM A WOMAN.

9 "QUESTION: I JUST WANT TO MAKE SURE I'M CLEAR. YOU  
10 DIDN'T SAY SPECIFICALLY BECAUSE YOU ARE A WOMAN,  
11 CORRECT?

12 "ANSWER: I DIDN'T USE THOSE WORDS, NO."

13 SO NOW WHERE'S THE EVIDENCE THAT SOMEONE DID SOMETHING TO  
14 HER BECAUSE SHE IS A WOMAN? THERE ISN'T ANY. WHAT THEY HAVE  
15 DONE IS JUST GRABBED EVERYTHING THAT HAS EVER HAPPENED IN THE  
16 WORKPLACE, THROWN IT UP AGAINST THE WALL, AND SAID HE DID  
17 THIS, HE DID THIS, HE DID THIS. BUT WHERE'S THE CONNECTION?  
18 WHERE IS THE BECAUSE SHE IS A WOMAN? THERE ISN'T ONE. WHERE  
19 IS THE COMMENT? THERE ISN'T ONE. WHERE ARE THE PEOPLE WHO  
20 WITNESSED THIS? THERE ARE KNOWN.

21 SHE HAS NOT SHOWN ANYTHING HAPPENED TO HER BECAUSE SHE IS  
22 A WOMAN, LET ALONE WHAT I AM ABOUT TO TALK ABOUT. CONDUCT  
23 THAT WAS SEVERE OR PERVASIVE. SEVERE OR PERVASIVE.

24 AND THEN THAT A REASONABLE PERSON IN CIARA NEWTON'S  
25 CIRCUMSTANCES WOULD HAVE CONSIDERED THE WORK ENVIRONMENT TO BE

## CLOSING ARGUMENT - LAFAYETTE

1 HOSTILE OR ABUSIVE. WHERE IS THAT? BECAUSE SHE IS A WOMAN,  
2 YOU SEE. IT ALL HAS TO DO BECAUSE SHE IS A WOMAN. AND THERE  
3 ISN'T ANYTHING HERE.

4 THE SUPERVISOR ENGAGED IN HARASSING CONDUCT. THE  
5 SUPERVISOR, WHO IS THE SUPERVISOR? WHO IS THE SUPERVISOR WHO  
6 DID THIS? THERE ISN'T ANYONE. IT DIDN'T HAPPEN.

7 HARASSING CONDUCT MEANS CONDUCT OUTSIDE THE SCOPE OF  
8 NECESSARY JOB PERFORMANCE ENGAGED IN FOR REASONS OF PERSONAL  
9 GRATIFICATION, MEANNESS, BIGOTRY, HOSTILITY, OR OTHER PERSONAL  
10 MOTIVES, HARASSING CONDUCT. WHERE IS THAT? DID I HEAR THAT  
11 BECAUSE SHE IS A WOMAN? I DIDN'T HEAR THAT. I DIDN'T SEE ANY  
12 EVIDENCE ON THAT.

13 VERBAL HARASSMENT. NO ONE CALLED HER ANY NAMES. NOBODY  
14 DID ANYTHING TO HER BECAUSE SHE IS A WOMAN. NOBODY DID  
15 ANYTHING TO HER THAT HASN'T BEEN DONE TO ANYBODY ELSE IN THE  
16 WORKPLACE. NOTHING. NO HARASSMENT HERE.

17 VISUAL HARASSMENT. ALL RIGHT. THIS HAPPENED. THIS  
18 HAPPENED (INDICATING). SEVERE OR PERVASIVE? NO. THE  
19 TESTIMONY IN THIS CASE IS SHE NEVER SAW ANYTHING LIKE THIS  
20 BEFORE SHE SAW THIS THING ON AUGUST 29. AND SHE NEVER SAW  
21 ANYTHING LIKE THIS AFTER THIS. AND ON AUGUST 29, SHE ONLY SAW  
22 THIS ONE. AND AFTER THAT THE COMPANY TOOK ACTION TO MAKE SURE  
23 THAT WHATEVER THIS IS WAS REMOVED FROM THE WORKPLACE AND  
24 DIDN'T SHOW UP AGAIN. AND NO ONE HAS TESTIFIED OTHERWISE. NO  
25 ONE HAS TESTIFIED THAT IT EVER CAME BACK AGAIN. NOT SEVERE OR

## CLOSING ARGUMENT - LAFAYETTE

1 PERVASIVE HERE. AND THERE IS NO EVIDENCE WHATSOEVER THAT A  
2 MANAGER OR SUPERVISOR DID IT. NONE. NONE.

3 AND IF A MANAGER OR SUPERVISOR DIDN'T DO IT, THEN SHE HAS  
4 TO SHOW THAT WE KNEW OR SHOULD HAVE KNOWN THAT IT WAS THERE  
5 AND DIDN'T TAKE ACTION BEFORE IT GOT TO HER. THERE IS NO  
6 EVIDENCE ANYBODY KNEW IT WAS THERE AND FAILED TO TAKE ACTION  
7 TO FROM PREVENT IT TO GETTING TO HER. THERE IS NO SUCH  
8 EVIDENCE IN THIS CASE. NO.

9 THERE'S NO HARASSING CONDUCT. SEVERE OR PERVASIVE MEANS  
10 CONDUCT THAT ALTERS THE CONDITIONS OF EMPLOYMENT AND RELATES  
11 TO A HOSTILE OR ABUSIVE WORK ENVIRONMENT DETERMINE -- YOU MAY  
12 CONSIDER THE NATURE OF THE CONDUCT, HOW OFTEN. NO, IT DIDN'T  
13 HAPPEN. THE CIRCUMSTANCES UNDER WHICH THE CONDUCT OCCURRED,  
14 WHETHER THE CONDUCT WAS PHYSICALLY THREATENING OR HUMILIATING.  
15 THAT DIDN'T HAPPEN HERE.

16 SUPERVISOR. IF THAT PERSON HAS THE AUTHORITY TO HIRE, NO  
17 JEFF, TRANSFER, PROMOTE, ASSIGN, REWARD, DISCIPLINE, OR  
18 EFFECTIVELY RECOMMEND. NONE OF THAT. THE RESPONSIBILITY TO  
19 ACT ON CIARA NEWTON'S GRIEVANCES. NONE OF THAT.  
20 RESPONSIBILITY TO DIRECT CIARA NEWTON'S DAILY WORK ACTIVITY,  
21 NOT WORK ACTIVITY, TRAINING. WHERE IS JEFF FISCHER IN THERE?  
22 HE'S NOT.

23 SUBSTANTIAL FACTOR IN CAUSING HARM IS A FACTOR THAT A  
24 REASONABLE PERSON WOULD CONSIDER TO HAVE CONTRIBUTED TO THE  
25 HARM. THERE WAS NO HARM.

1 CONTINUING VIOLATION. THIS IS WHERE I TALKED ABOUT -- YOU  
2 SEE THAT DATE, MAY 24? ANYTHING THAT HAPPENED BEFORE MAY 24  
3 CAN'T BE CONSIDERED. EVERYTHING THAT SHE'S TALKING ABOUT WITH  
4 JEFF FISCHER HAPPENED BEFORE THAT DATE. EVERYTHING, INCLUDING  
5 THE PARALLEL TRAINING CHECKLIST WHICH I SHOWED TO YOU HAS A  
6 DATE OF MAY 23RD. THAT'S THE LAW.

7 UNLESS JEFF FISCHER DID SOMETHING AFTER THAT, AND YOU KNOW  
8 WHAT? THERE IS NO EVIDENCE IN THIS CASE, EVEN IF YOU THOUGHT  
9 THAT JEFF FISCHER HAD DONE SOMETHING BAD, THERE'S NO EVIDENCE  
10 IN THIS CASE THAT HE DID ANYTHING TO HER AFTER THAT DATE  
11 BECAUSE SHE WAS SOMEWHERE ELSE AND HE WAS ON THE TURNAROUND.  
12 DIDN'T HAPPEN. DIDN'T HAPPEN. SO YOU CAN'T LOOK AT JEFF  
13 FISCHER'S WHATEVER IT WAS THEY SAY HE DID.

14 SEE? OCCURRED AFTER, WAS SIMILAR OR RELATED. IT'S NOT  
15 SIMILAR OR RELATED. THE ONLY THING THAT HAS HAPPENED AFTER  
16 THIS IS THE STICKER, AND THAT'S UNRELATED TO JEFF FISCHER.

17 OH. WAS REASONABLY FREQUENT AFTER THAT. NO, THERE'S NO  
18 REASONABLY FREQUENT AFTER MAY 23RD.

19 NOW, DISCRIMINATION BASED ON GENDER WAS A SUBSTANTIAL  
20 MOTIVATING REASON. NOT TRUE. HER GENDER DIDN'T FACTOR INTO  
21 THESE DECISIONS AT ALL. YOU NEVER HEARD ANYBODY SAY THAT IT  
22 DID. THERE'S NO TESTIMONY HERE THAT IT DID. IN FACT, WHAT  
23 YOU HEAR HERE IS THE PLAINTIFF EVEN ACKNOWLEDGES THAT IF SHE  
24 DID THE THINGS -- IF PEOPLE BELIEVED THE THINGS THAT ARE IN  
25 THAT PD LOG, THEN SHE SHOULD BE FIRED. PERIOD.

1           THAT'S WHY SHE'S FIRED BECAUSE OF THOSE THINGS. WHERE IS  
2       THE GENDER ISSUE? WHO TESTIFIED THAT THEY HAD A BIAS AGAINST  
3       GENDER?

4           I ASKED HER: ARE YOU AWARE OF ANY OF THESE PEOPLE HAVING  
5       A BIAS AGAINST GENDER?

6           SHE SAID, NO, NONE OF THEM.

7           ARE YOU AWARE OF ANYTHING THAT SUGGESTED THEY HAVE A BIAS  
8       AGAINST WOMEN?

9           NO, NONE OF THEM.

10          DID SHE EVER BRING SOMEONE IN HERE THAT SAID I HAVE HEARD  
11       THESE PEOPLE SAY BIASED THINGS AGAINST WOMEN?

12          NO, NONE OF THEM.

13          SO WHERE IS THE BIAS HERE? WHERE'S THE GENDER BIAS HERE  
14       WITH THE PEOPLE WHO ARE MAKING DECISIONS, PARTICULARLY ONE OF  
15       THE PEOPLE MAKING RECOMMENDATIONS IS A WOMEN HERSELF. I KNOW  
16       WE THINK ABOUT SELF-HATRED, BUT WHERE IS THE EVIDENCE OF THAT?  
17       NONE. NONE OF THAT HAPPENED HERE.

18          NOW, FEHA RETALIATION. CIARA COMPLAINED ABOUT  
19       DISCRIMINATION AND HARASSMENT. WELL, OKAY. THEY KEEP TRYING  
20       TO SAY -- THE ESSENCE OF THEIR ARGUMENT IS THAT IF YOU'RE A  
21       WOMAN AND YOU SAY THAT SOMETHING IS NOT WORKING FOR YOU OR YOU  
22       MENTION FAIRNESS, THEN IT ABSOLUTELY POSITIVELY HAS TO BE YOUR  
23       GENDER. IT CAN NEVER EVER BE ANYTHING ELSE. EVEN WHEN YOU  
24       HAVE BEEN CONNECTING THAT UNFAIRNESS TO DONUTS. THAT'S NOT  
25       RIGHT. IT'S JUST NOT RIGHT. YOU'VE GOT TO DO MORE THAN THAT.

## CLOSING ARGUMENT - LAFAYETTE

1           SO, WHERE'S THE COMPLAINT? AND WHERE IS IT THAT THAT  
2 COMPLAINT -- YOU SEE, UP UNTIL AUGUST, SEPTEMBER -- OF  
3 JULY 22, SHE HADN'T SAID ANYTHING, NOTHING. AND NOW SHE'S  
4 TALKING ABOUT DONUTS ON JULY 22. BUT BY THEN THE DYE HAS BEEN  
5 CAST.

6           HOW DO WE KNOW THAT? BECAUSE THE UNION THINKS WHEN THEY  
7 ARE GOING TO SIT DOWN ON AUGUST 1, AUGUST 2, THAT IT IS A  
8 TERMINATION MEETING, AND THAT'S WHY THEY SENT THE BIG DOG IN.  
9 WHERE IS THERE SOMETHING HERE THAT SOMEONE IS REACTING TO  
10 ABOUT SOME COMPLAINT SHE'S MAKING. IT DOESN'T EXIST.

11           RETALIATION FURTHER DEFINED. SHE DOESN'T SAY WORDS OR  
12 ANYTHING TO THE EFFECT AND NO ONE SAID THEY UNDERSTOOD IT, SHE  
13 TALKED ABOUT DONUTS.

14           NOW, IT MUST BE MORE THAN TRIVIAL, MEANING TO THE EXTENT  
15 THEY ARE TALKING ABOUT RETALIATION, A SUBSTANTIAL FACTOR MEANS  
16 A REASON THAT ACTUALLY CONTRIBUTED TO CIARA NEWTON'S  
17 TERMINATION. IT MUST BE MORE THAN REMOTE OR TRIVIAL. NOTHING  
18 HAS BEEN PRESENTED HERE.

19           NOW, SO THEN WE GET TO -- WELL, OKAY, MAYBE SOMEBODY ELSE  
20 DID. WHO DID? WHO WITH A BIAS MADE SOMEONE DO SOMETHING AS A  
21 CAT'S PAW? THERE IS NO ONE. OH, YEAH, THEY WANT TO SAY THAT  
22 MAYBE MR. FISCHER DID. BUT MR. FISCHER NEVER SAID SHE SHOULD  
23 BE FIRED. AND MR. FISCHER, AT BEST, SIGNED ASSESSMENTS THAT  
24 MOVED HER ALONG. SO WHERE IS THE EVIDENCE THAT MR. FISCHER  
25 DID SOMETHING TO UNDERMINE HER? THERE ISN'T ANYTHING.



## CLOSING ARGUMENT - LAFAYETTE

1        NOTHING.  NOTHING THAT MR. FISCHER DID TO UNDERMINE HER.

2            THE WHISTLEBLOWER, THAT DEFENDANT BELIEVED -- THAT  
3        DEFENDANT BELIEVED THAT CIARA NEWTON DISCLOSED TO A PERSON  
4        WITH AUTHORITY OVER HER THE FAILURE TO RESPOND TO AN ACID  
5        SPILL AT THE REFINERY.  HOW COULD THAT POSSIBLY HAPPEN WHEN WE  
6        KNOW THE SPILL HAD BEEN PROPERLY RESPONDED TO?  WE KNOW THAT  
7        ON THE SHIFT BEFORE, IT HAD ALL BEEN HANDLED.  HOW COULD WE  
8        POSSIBLY KNOW THAT?  HOW COULD ANYBODY BELIEVE THAT?  THAT IS  
9        NOT PLAUSIBLE.

10          NOW, THEN WE GET TO THIS (INDICATING).  I DIDN'T HEAR HER  
11        IDENTIFY A STATUTE, FEDERAL OR ANYTHING.  I DIDN'T HEAR HER  
12        SAY ANYTHING LIKE THAT.  I THINK TO THE EXTENT THAT SHE SAID  
13        ANYTHING, IT WAS OSHA.

14          AND AS TO OSHA, I THINK WHAT SHE SAID IS SOMETHING ABOUT  
15        GLOVES.  SHE SAYS:

16          I THOUGHT MAYBE WE WERE VIOLATING LIKE AN ENVIRONMENTAL  
17        PROCEDURE BECAUSE THE SULFURIC ACID WAS THERE AND WE PUT  
18        OYSTER SHELLS ON IT.  AND THEN THAT IS ALL WE DID.  SO IT  
19        SEEMED LIKE WE COULD HAVE DONE MORE BECAUSE I SAW OSHA WHEN  
20        WORKING WITH SULFURIC ACID YOU NEED FOR SURE RUBBER GLOVES.

21          RUBBER GLOVES.  THERE IS NO TESTIMONY IN THIS CASE THAT  
22        ANYBODY WAS NOT USING RUBBER GLOVES.

23          SO WHAT SHE'S COMPLAINING ABOUT?  YOU SEE, IT BECOMES A  
24        SHIFTING ISSUE WITH ME.  OKAY?  IT STARTS OUT, I TALKED ABOUT  
25        THE ACID.  OKAY.  AND YOU DIDN'T KNOW ANYTHING ABOUT THE ACID

## CLOSING ARGUMENT - LAFAYETTE

1 AND CAMERON COMES TO YOU AND SAYS, LOOK, IT HAS BEEN HANDLED.  
2 WE HAVE DONE THIS ALREADY. WE DID IT BEFORE. IT IS ALREADY  
3 HANDLED. THERE IS NO DANGER HERE.

4 THEN SHE GOES AND SHE WRITES ON HER PD LOG SOMETHING. AND  
5 HE SAYS, WHAT IS THIS? SHE SAYS, I WROTE THIS IN HERE -- NOT  
6 ON HER PD LOG, ON HER SHIFT REPORT. HE SAID, LOOK, OKAY, I AM  
7 NOT TELLING YOU TO TAKE IT OUT. THERE IS NO DISPUTE THAT HE  
8 DID THAT. HE SAID I AM NOT TELLING YOU TO TAKE IT OUT. SHE  
9 DOESN'T DENY THAT.

10 I'M TELLING YOU THAT YOU MAY WANT TO TALK TO THE SHIFT  
11 TEAM LEADER AND YOU MAY WANT TO TALK TO THE OPERATOR WHO WAS  
12 ON TO GET MORE THAN YOU THINK YOU KNOW. OTHERWISE IT LOOKS  
13 LIKE YOU'RE REPORTING ON PEOPLE AND YOU DON'T KNOW WHAT  
14 HAPPENED, AND THAT MIGHT GET YOU IN BAD STEAD WITH THE UNION  
15 PEOPLE, WHICH ARE YOUR BROTHERS AND SISTERS HERE. AND SHE  
16 TOOK IT OUT.

17 WHERE IS THE EVIDENCE OF RETALIATION? PLAINTIFF ARGUES  
18 THAT THE EVIDENCE IS RETALIATION IS BECAUSE HE TALKED TO HER  
19 WHEN SHE MADE MISTAKES THEREAFTER. SORT OF LIKE, OH, THERE'S  
20 SOMETHING SURPRISING. HE TALKED TO HER WHEN SHE MADE MISTAKES  
21 THEREAFTER.

22 WELL, DID SHE MAKE THE MISTAKES? AND ARE THEY THE TYPES  
23 OF COMPLACENT MISTAKES THAT MR. JOYCE SAID THAT PEOPLE SHOULD  
24 TALK TO PEOPLE ABOUT. AND THEY ARE. SO WHAT IS HE SUPPOSED  
25 TO DO; IS HE NOT SUPPOSED TO TALK ABOUT THEM NOW? THERE'S NO

1 EVIDENCE OF RETALIATION HERE.

2 AND AT THE END OF THE DAY, DID HE RETALIATE AGAINST HER BY  
3 MAKING SOME COMMENTS IN HER ASSESSMENT? THERE'S NO  
4 RETALIATION THERE EITHER. SO WHERE IS THE RETALIATION? THERE  
5 ISN'T ANY. THERE ISN'T ANY. IT'S JUST THROW IT UP THERE AND  
6 MAKE IT SEEM LIKE THERE IS BECAUSE THERE ISN'T ANY.

7 SO NOW THIS IS THE CHART THAT THEY USED. SO THEY USED  
8 THIS. WHAT THEY WERE FOCUSING ON IS THAT AND THEN THEY WERE  
9 SAYING THIS (INDICATING). WELL, THE REAL ISSUE ABOUT THIS IS  
10 DID THOSE THINGS HAPPEN. YOU SEE, THEY DON'T ADDRESS THAT  
11 QUESTION OF DID THESE THINGS HAPPEN BECAUSE THEY DID. ALL OF  
12 THOSE THINGS DID HAPPEN. SO I AM HERE TO SAY "HAPPENED" AND  
13 WORTHY OF TALKING ABOUT.

14 SO, NOW, IF WE PROVE BY CLEAR AND CONVINCING THAT WE  
15 TERMINATED HER REGARDLESS, OKAY, FINE. SHE ADMITS THAT WE HAD  
16 GROUNDS TO TERMINATE HER. THE UNION, BY SENDING THE BIG DOG  
17 ACKNOWLEDGES THAT IT WAS A TERMINATION EVENT, AND WE  
18 TERMINATED HER. IT IS CLEAR AND CONVINCING. THAT'S WHAT THAT  
19 IS.

20 SO WE GET TO THIS. LONG WAY TO GET TO THIS. DID CIARA  
21 NEWTON ESTABLISH HER FIRST CLAIM FOR HARASSMENT BASED ON  
22 GENDER BY A PREPONDERANCE OF THE EVIDENCE? NO.

23 AND THAT'S WHAT I WANT YOU TO DO WHEN YOU GO IN THERE AND  
24 LOOK AT ALL THE EVIDENCE, TALK ABOUT THIS CASE, NO.

25 DID CIARA NEWTON ESTABLISH HER SECOND CLAIM FOR GENDER

1 DISCRIMINATION BY A PREPONDERANCE OF THE EVIDENCE? NO, FOR  
2 ALL REASONS I SPOKE ABOUT HERE TODAY.

3 DID CIARA NEWTON ESTABLISH HER THIRD CLAIM FOR FEHA  
4 RETALIATION BY A PREPONDERANCE OF THE EVIDENCE? NO. THERE IS  
5 NO EVIDENCE HERE THAT ANYBODY INTENDED TO RETALIATE AGAINST  
6 HER. THERE'S NONE.

7 IF YOU ANSWERED "NO" TO ALL THE QUESTIONS, PLEASE PROCEED  
8 TO QUESTION FIVE.

9 DID CIARA NEWTON ESTABLISH HER FIFTH CLAIM FOR  
10 WHISTLEBLOWER RETALIATION? NO.

11 AND THEN SIGN IT.

12 NOW, I TRY MY BEST TO BE COMPLETE, BUT I'M NOT ALWAYS  
13 COMPLETE. I'M HOPING THAT THERE ARE THINGS THAT YOU HEARD  
14 THAT I JUST DIDN'T THINK TO MENTION.

15 AT THIS POINT ALL I CAN DO IS ASK, IS FIRST THANK YOU FOR  
16 THE TIME YOU HAVE PUT IN TO LISTENING TO EVERYTHING WE SAID  
17 HERE. I WANT YOU TO THINK ABOUT SOMETHING AS YOU DO IT: JUST  
18 BECAUSE A GUY IS A GUY, DOESN'T MEAN THAT HE'S SEXIST. JUST  
19 BECAUSE A GUY WORKS IN A PLACE THAT MEN HAVE TRADITIONALLY  
20 WORKED IN DOESN'T MEAN THAT THEY ARE SEXIST. IT DOESN'T.  
21 JUST BECAUSE THEY DO THAT DOESN'T MEAN THAT THEY DON'T WANT  
22 WOMEN TO WORK THERE. THAT'S NOT TRUE. THAT'S NOT TRUE.

23 AND JUST BECAUSE THESE GUYS MAY NOT BE THE GUYS WHO SPEAK  
24 THE QUEEN'S LANGUAGE WITH THE BEST ELOQUENCE OR RIGHT  
25 NARRATIVE LIKE THEY WERE TRAINED AT SOME IVY LEAGUE COLLEGE OR

1 SOMETHING, THAT DOESN'T MEAN THAT THEY ARE BAD. THEY ARE  
2 HUMANS.

3 AND IT DOESN'T MEAN THAT THEY HAVE ANYTHING ON THEIR MIND  
4 OTHER THAN THEIR SAFETY. THEY WANT TO GO HOME TO THEIR  
5 FAMILIES.

6 NOW, PLAINTIFF TESTIFIED IN THIS TRIAL THAT SHE'S NEVER  
7 CRIED AT WORK. AND DEANNA MARTINEZ CAME IN HERE AND SAID  
8 THAT'S UNTRUE. DEANNA MARTINEZ PAINTED A PICTURE OF WHAT WORK  
9 WAS LIKE FOR HER. NO REASON TO DISBELIEVE THAT DESCRIPTION OF  
10 WHAT SHE SAID.

11 TO PICK EVERY MINOR THING OUT LIKE, WELL, HE ASKED ME WHAT  
12 DID MY HUSBAND THINK ABOUT ME WORKING IN A REFINERY? WHAT'S  
13 WRONG WITH THAT? YOU SPEND 12-HOUR ROTATING SHIFTS WITH THESE  
14 PEOPLE, YOU TALK ABOUT EVERYTHING. HE ASKS GUYS THIS QUESTION  
15 BECAUSE IT'S A TOUGH JOB. IF THEY HAVE A SPOUSE, THEY HAVE TO  
16 UNDERSTAND. PERIOD. WHY IS THAT THROWN UP AGAINST THE WALL  
17 AS GENDER RELATED?

18 MR. METCALF CAME IN HERE AND HE TALKED ABOUT A  
19 CONVERSATION THAT HE HAD ON A SAFETY MEETING, AND WHEN I FIRST  
20 HEARD HIM TALK ABOUT IT, I WAS A LITTLE CHOKED UP. BECAUSE  
21 HE'S TALKING ABOUT A FAMILY THAT DIED, AND HOW HE WANTS TO  
22 BUILD HIS FAMILY AND MAKE SURE THAT THEY ARE SOMEHOW PROTECTED  
23 IN THE EVENT OF AN EMERGENCY THAT TAKES PLACE AT HOME. A  
24 VALID CONVERSATION WITH PEOPLE WHO YOU WORK WITH LIKE THIS WHO  
25 ARE PART OF YOUR FAMILY. AND TO THEN TRY AND SPIN THAT TO

## CLOSING ARGUMENT - LAFAYETTE

1       SOMEHOW BE HARASSMENT IS JUST WRONG.

2               SO WHAT WE HAVE HERE IS EVERY LITTLE COMMENT HAS BEEN  
3       TAKEN OUT OF CONTEXT, EVERY LITTLE THING HAS BEEN SPUN TO TRY  
4       AND MAKE IT SOMETHING THAT IS IT'S NOT. SPIN, SPIN, SPIN, AND  
5       NEVER LET IT LAND SO YOU CAN FIND OUT WHAT IT'S REALLY ABOUT.  
6       THAT'S WHAT WE HAVE BEEN FIGHTING IN THIS CASE AND THAT IS  
7       WHAT THAT HAS BEEN ABOUT. AND I AM ASKING YOU NOT TO GET  
8       CAUGHT UP IN THE SPIN.

9               IN A COUPLE OF MINUTES I AM GOING TO SIT DOWN. I HATE TO  
10       SIT DOWN BECAUSE I ALWAYS THINK I FORGOT SOMETHING. I FORGOT  
11       SOMETHING. I HAD OTHER THINGS I MEANT TO ASK PEOPLE ON THE  
12       STAND, AND I FORGOT. I WILL TELL YOU, I FORGOT. I JUST  
13       DIDN'T DO IT. NOT BECAUSE IT WASN'T IMPORTANT, IT WAS JUST  
14       BECAUSE I FORGOT.

15              BUT WHEN I SIT DOWN, I CAN'T COME BACK AGAIN. THEY WILL  
16       GET A CHANCE TO COME BACK AGAIN. I WON'T. I'M DONE. YOU  
17       WILL SEE ME CLEAN MY DESK OFF BECAUSE I'M DONE. I CAN'T SAY  
18       ANYTHING. ALL I CAN DO IS SIT.

19              I ONLY HOPE THAT THEY DON'T COME AND START TALKING ABOUT  
20       THINGS THAT THEY DIDN'T GIVE ME ADVANCE NOTICE OF WHEN THEY  
21       WERE PRESENTING THEIR INITIAL ARGUMENT. BECAUSE I CAN'T STAND  
22       UP AND SAY, I GOT SOMETHING TO SAY ABOUT THAT. I CAN'T DO  
23       THAT. I'M DONE.

24              NOW, THANK YOU. I HOPE YOU GO BACK AND LOOK AT  
25       EVERYTHING. I HOPE YOU PAY ATTENTION TO WHAT I'VE TOLD YOU.

## REBUTTAL CLOSING ARGUMENT - NUGENT

1 I TRIED TO GIVE YOU THE BEST ROADMAP I COULD, TELL YOU WHICH  
2 DOCUMENTS TO LOOK AT, TELL YOU WHAT PEOPLE ACTUALLY SAID AS  
3 OPPOSED TO WHAT I THINK THEY SAID, AND COME BACK WITH A  
4 DEFENSE VERDICT.

5 I APPRECIATE YOUR TIME.

6 **THE COURT:** HOW LONG -- THANK YOU, MR. LAFAYETTE.  
7 HOW LONG IS YOUR REBUTTAL?

8 **MS. NUGENT:** I WON'T TAKE TOO MUCH TIME AT ALL.  
9 MAYBE TEN MINUTES TOPS.

10 **THE COURT:** LET'S TAKE THE REBUTTAL.

11 **MS. NUGENT:** OKAY.

12 **REBUTTAL CLOSING ARGUMENT**

13 **MS. NUGENT:** OKAY. I SAID I WOULDN'T TAKE TOO MUCH  
14 OF YOUR TIME, SO I JUST WANT TO ADDRESS SOME OF THE THINGS  
15 THAT MR. LAFAYETTE JUST SAID AND I WANT TO START WITH ONE OF  
16 THE THINGS HE JUST LEFT OFF WITH, AND THAT IS DEANNA MARTINEZ.

17 AND YOU SAW HER COME IN TODAY, AND YOU MAY NOT HAVE  
18 REMEMBERED, BUT SHE WAS ON THE SAME TEAM WITH BILL WESSELMAN.  
19 YOU SAW HIM ON THE FIRST DAY, THE GUY WHO USED TO WORK FOR  
20 CHP. THEY WERE ON THE SAME TEAM.

21 I TRIED TO ASK HIM, DID YOU SEE MS. NEWTON AT WORK? AND  
22 HE SAID, NO, I WAS ON THE SOUTH SIDE. I SAW HER IN THE  
23 OFFICE. THAT'S IT.

24 SUDDENLY ON THE LAST DAY, WE GET DEANNA MARTINEZ, HAS  
25 WORKED THERE FOR A REALLY LONG TIME. SHE'S GOT FAMILY MEMBERS

1 WHO WORK THERE THAT SHELL HAULS IN AND TELLS YOU I SAW HER IN  
2 THE WORKPLACE ALL THE TIME, I SAW HER CRYING. IT'S JUST NOT  
3 CREDIBLE.

4 I WILL TALK A LITTLE BIT MORE ABOUT CREDIBILITY. I'M NOT  
5 SURE QUITE WHAT WAS HAPPENING WITH EXHIBIT 70 AND THE  
6 COMPARISON WITH EXHIBIT 65 AND CHRISTINE LAYNE. YOU SAW  
7 CHRISTINE LAYNE UP THERE. SHE COULD NOT REMEMBER ANY  
8 CONVERSATION WITH ANYONE ABOUT CIARA NEWTON, AND YOU ARE  
9 SUPPOSED TO BELIEVE THAT SHE REMEMBERS ON HALLOWEEN 2016  
10 SCANNING IN A PERSONNEL FILE AND THE PAGES GOT CAUGHT IN  
11 THERE? JUST NOT CREDIBLE. SHE JUST COULDN'T TELL YOU  
12 ANYTHING ELSE.

13 THE BIG DOG, I GUESS WE ARE CALLING HIM, RAY JONES. IN  
14 CASES LIKE THIS, YOU ARE LOOKING FOR SOMEONE TO GIVE YOU SOME  
15 REALITY AND SOME TRUTH. AND YOU SAW THAT WITH RAY JONES. YOU  
16 SAW THAT.

17 HE CAME IN AND HE TOLD YOU HIS PERCEPTION OF BEING AT THAT  
18 PLACE FOR ALMOST 25 YEARS, AND BEING IN DISCIPLINARY MEETINGS,  
19 AND SEEING PD LOGS, WHICH, BY THE WAY, YOU WERE PROMISED IN  
20 THE DEFENDANT'S OPENING YOU WERE GOING TO SEE OTHER PEOPLE'S  
21 PD LOGS. WE DIDN'T SEE THEM. WE DIDN'T. WE SAW PATRIK  
22 NEUMAN'S, WE SAW CIARA NEWTON'S, AND WE SAW JOHN HESS'S, AND  
23 THAT IS IT. YOU DIDN'T SEE ANY OTHERS.

24 SO RAY JONES COMES IN AND TELLS YOU THIS IS NOT WHAT WE  
25 NORMALLY SEE. AND YOU CAN RELY ON THAT. WE JUST HEARD A LOT



1 ABOUT, LOOK, THEY THOUGHT SHE WAS GOING TO BE FIRED ON  
2 JULY 22ND SO WE NEEDED RAY JONES IN THIS MEETING. THAT'S TRUE  
3 BECAUSE NICK BACKENS, HE'S ALSO A STEWARD, HE'S A LITTLE LOWER  
4 ON THE TOTEM POLE THAN, I GUESS, THE BIG DOG, RAY JONES.

5 AND HE SAID, I THINK SHE MAY BE FIRED BECAUSE HE'S SEEING  
6 WHAT'S IN THIS PD LOG. IT'S NOT NORMAL. ALL OF A SUDDEN  
7 SHE'S COMPLAINING -- SHE COMPLAINS ABOUT GENDER BIAS IN THE  
8 JULY 22ND MEETING. YOU CAN TAKE A LOOK AT THE WORDS,  
9 EXHIBIT 33. IT'S ON THE LAST PAGE. IT HAS BATES STAMP 1110  
10 ON THE BOTTOM OF IT. IT SAID, I'M BEING TREATED UNFAIRLY.  
11 THAT'S A WRITE-UP OF THE JULY 22ND MEETING. SHE'S SAYING  
12 THAT. SHE'S SAYING I DIDN'T EVEN KNOW THAT THE PD LOG -- THAT  
13 ALL THOSE THINGS WERE GOING TO BE IN THE PD LOG THAT I'M BEING  
14 WRITTEN UP. YES, THEY HAPPENED. ABSOLUTELY. THEY ARE  
15 REGULAR THINGS THAT HAPPENED AT WORK. BUT SHE DOESN'T REALIZE  
16 THEY ARE BEING USED AGAINST HER AND EVENTUALLY FOR HER  
17 TERMINATION.

18 WE ALSO HEARD A TERM "MISLEADING". WHAT'S MISLEADING IS  
19 ALL THE TIMES YOU SAW UP THERE RICHARD METCALF'S RATINGS OF  
20 MS. NEWTON WITH ALL OF THE 2'S CIRCLED. WHAT ABOUT THE 4'S?  
21 WHAT ABOUT THEM? WORK ETHIC, 4, ATTITUDE BEHAVIORS. I THINK  
22 THE OTHER WORD IS PERFORMANCE, 4. TWO FOR PERMITTING, TWO FOR  
23 ISOLATING, THOSE ARE THINGS NEW OPERATORS NEED TO LEARN. WORK  
24 ETHIC, ATTITUDE PERFORMANCE, 4. WHY CHERRY PICK THAT? WHY  
25 CHERRY PICK THAT?

1 THE THING ABOUT THE OSHA, SO WE ARE TALKING ABOUT THE  
2 WHISTLEBLOWER CLAIM, THE RETALIATION CLAIM, THEY ARE SAYING  
3 SHE WAS ONLY SAYING, LOOK, WE ARE NOT DOING SOMETHING  
4 ACCORDING TO THE OSHA REGULATION HAVING TO DO WITH GLOVES.

5 BUT LOOK AT THE NOTES, HER AUGUST 1ST NOTES. THAT'S  
6 EXHIBIT 75. SHE SAYS IN THERE SHE KNOWS ABOUT THE OSHA  
7 EXPOSURE LIMITS. AND THAT'S WHAT SHE HAD IN MIND WHEN SHE  
8 WENT INTO THE AUGUST 2ND MEETING, SHE USED THOSE NOTES TO  
9 PREPARE HERSELF FOR THAT MEETING. YOU CAN LOOK AT THOSE, AND,  
10 NO, THEY DON'T SAY EXACTLY GENDER, RIGHT? WHY WOULD SHE WRITE  
11 THAT? IT'S OBVIOUS. CHRISTINE LAYNE SAID SHE KNOWS YOU DON'T  
12 HAVE TO USE MAGIC WORD, RIGHT? YOU DON'T HAVE TO USE MAGIC  
13 WORDS. YOU DON'T HAVE TO SAY -- IT'S IN THE JURY  
14 INSTRUCTIONS, GENDER HARASSMENT, GENDER DISCRIMINATION.  
15 CHRISTINE LAYNE KNEW IT. SHE ADMITTED IT. SO LOOK AT THOSE.

16 A LITTLE BIT ON JEFF FISCHER. I AM NOT GOING TO COME UP  
17 HERE AND TELL YOU THAT HE WAS A SUPERVISOR BECAUSE HE TOLD YOU  
18 ON THE STAND THAT HE WAS A SUPERVISOR. HE SAID THAT. HE  
19 SAID, YES, I WAS HER TRAINER SUPERVISOR.

20 I HEARD FROM SHELL'S COUNSEL JUST NOW THAT HE WASN'T  
21 ALLOWED TO WRITE IN PD LOGS, BUT HE WROTE IN HER PD LOGS. SO  
22 THAT DOESN'T MAKE SENSE. THAT'S EXHIBIT 83, THE PD LOG.

23 AND I THINK I'M GOING TO END WITH THIS. WE ALSO HEARD  
24 THAT NOBODY ELSE HEARD ANYTHING ABOUT GENDER HARASSMENT.  
25 NOBODY ELSE HEARD ANY OF THESE COMMENTS.

1 JOSE NAVARRO. HE GOT UP THERE AND HE SAID THAT HE HEARD  
2 JEFF FISCHER SAY, WOMEN DON'T LAST IN OPCEN. WOMEN DON'T MAKE  
3 IT.

4 DO YOU KNOW HOW HARD THAT WAS FOR HIM? SITTING THERE,  
5 STILL WITH THE JOB, HAVING ALL THE BIG WIGS COMING IN  
6 TESTIFYING FOR THE COMPANY? THAT WAS REALLY DIFFICULT. IT  
7 TOOK A LOT OF COURAGE, AND YOU HEARD THAT FROM HIM.

8 NOW THE CASE IS IN YOUR HANDS.

9 THANK YOU.

10 **THE COURT:** THANK YOU, COUNSEL.

11 ALL RIGHT, LADIES AND GENTLEMEN, WHEN YOU GO TO THE JURY  
12 ROOM, THE FIRST THING YOU SHOULD DO IS ELECT ONE OF YOUR  
13 MEMBERS AS THE PRESIDING JUROR. THAT PERSON WILL PRESIDE OVER  
14 THE DELIBERATIONS AND SPEAK FOR YOU HERE IN COURT. THE  
15 PRESIDING JUROR SHOULD SEE TO IT THAT YOUR DISCUSSIONS ARE  
16 ORDERLY AND THAT EVERYONE HAS A FAIR CHANCE TO BE HEARD.

17 YOU WILL THEN DISCUSS THE CASE WITH YOUR FELLOW JURORS TO  
18 REACH AGREEMENT, IF YOU CAN DO SO. YOUR VERDICT MUST BE  
19 UNANIMOUS.

20 IT IS YOUR DUTY TO TALK WITH ONE ANOTHER IN THE JURY ROOM  
21 AND TO CONSIDER ALL THE VIEWS OF THE JURORS. EACH OF YOU MUST  
22 DECIDE THIS CASE FOR YOURSELF, BUT YOU SHOULD DO SO ONLY AFTER  
23 YOU HAVE CONSIDERED ALL OF THE EVIDENCE, DISCUSSED IT FULLY  
24 WITH THE OTHER JURORS, AND LISTENED TO THE VIEWS OF THE OTHER  
25 JURORS.

1 PLEASE DO NOT STATE YOUR OPINIONS TOO STRONGLY AT THE  
2 BEGINNING OF YOUR DELIBERATIONS AND DO NOT IMMEDIATELY  
3 ANNOUNCE HOW YOU PLAN TO VOTE BECAUSE THAT WILL INTERFERE WITH  
4 AN OPEN DISCUSSION. KEEP AN OPEN MIND SO THAT YOU AND YOUR  
5 FELLOW JURORS CAN EASILY SHARE IDEAS ABOUT THE CASE.

6 YOU SHOULD USE YOUR COMMON SENSE, BUT DO NOT USE OR  
7 CONSIDER ANY SPECIAL TRAINING OR UNIQUE EXPERIENCE, PERSONAL  
8 EXPERIENCE THAT ANY OF YOU HAVE IN MATTERS INVOLVED IN THIS  
9 CASE. YOUR TRAINING AND -- YOUR TRAINING OR THAT EXPERIENCE  
10 IS NOT PART OF THE EVIDENCE RECEIVED IN THE CASE.

11 DO NOT HESITATE TO CHANGE YOUR OPINION IF THE DISCUSSION  
12 PERSUADES YOU THAT YOU SHOULD. DO NOT COME TO A DECISION  
13 SIMPLY BECAUSE OTHER JURORS THINK IT'S RIGHT. IT IS IMPORTANT  
14 THAT YOU ATTEMPT TO REACH A UNANIMOUS VERDICT BUT, OF COURSE,  
15 ONLY IF EACH OF YOU CAN DO SO AFTER HAVING MADE YOUR OWN  
16 CONSCIENTIOUS DECISION. DO NOT CHANGE AN HONEST BELIEF ABOUT  
17 THE WEIGHT AND EFFECT OF THE EVIDENCE SIMPLY TO REACH A  
18 VERDICT.

19 YOU MAY TAKE BREAKS, BUT DO NOT DISCUSS THE CASE WITH  
20 ANYONE, INCLUDING EACH OTHER, UNTIL YOU ALL ARE BACK IN THE  
21 JURY ROOM.

22 BECAUSE YOU CAN BASE YOUR VERDICT ONLY ON THE EVIDENCE  
23 RECEIVED IN THE CASE AND ON THESE INSTRUCTIONS, I REMIND YOU  
24 THAT YOU CANNOT AND MUST NOT BE EXPOSED TO ANY INFORMATION  
25 ABOUT THE CASE OR THE ISSUES IT INVOLVES. EXCEPT FOR

1 DISCUSSING THE CASE WITH YOUR FELLOW JURORS DURING THESE  
2 DELIBERATIONS, I WILL FOR THE LAST TIME GO THROUGH MY DO NOTS.  
3 AT THIS POINT IT IS VERY IMPORTANT.

4 DO NOT COMMUNICATE WITH ANYONE IN ANY WAY AND DO NOT LET  
5 ANYONE ELSE COMMUNICATE WITH YOU ABOUT THE MERITS OF THIS  
6 CASE. THAT INCLUDES DISCUSSING THIS CASE IN WRITING, IN  
7 PERSON, BY PHONE, BY ELECTRONIC MEANS, BY EMAIL, BY TEXT  
8 MESSAGING, OR ANY INTERNET CHAT ROOM, BLOG, WEBSITE OR  
9 APPLICATION, INCLUDING BUT NOT LIMITED TO FACEBOOK, YOUTUBE,  
10 TWITTER, INSTAGRAM, LINKEDIN, SNAPCHAT, OR OTHER FORMS OF  
11 SOCIAL MEDIA, YOUR FAMILY, YOUR EMPLOYER, THE MEDIA, THE  
12 PRESS, ANYONE INVOLVED IN THIS TRIAL. IF YOU'RE ASKED OR  
13 APPROACHED, PLEASE TELL THEM YOU'VE BEEN ORDERED NOT TO  
14 DISCUSS THE MATTER AND REPORT THAT CONTACT TO ME.

15 DO NOT READ, WATCH OR LISTEN TO ANY NEWS OR MEDIA ACCOUNTS  
16 OR COMMENTARY ABOUT THE CASE OR ANYTHING TO DO WITH IT. DO  
17 NOT RESEARCH, DO NOT CONSULT DICTIONARIES OR SEARCH THE  
18 INTERNET OR USE OTHER REFERENCE MATERIALS. DO NOT INVESTIGATE  
19 OR IN ANY WAY TRY TO LEARN ABOUT THE CASE ON YOUR OWN.

20 DO NOT VISIT ANY PLACE DISCUSSED IN THIS CASE. DO NOT USE  
21 INTERNET PROGRAMS OR OTHER DEVICES TO SEARCH OR VIEW THE PLACE  
22 DISCUSSED IN THE TRIAL. DO NOT DO ANY RESEARCH ABOUT THE  
23 CASE, THE LAW, OR THE PEOPLE INVOLVED, INCLUDING THE PARTIES,  
24 THE WITNESSES, OR THE LAWYERS UNTIL YOU'VE BEEN EXCUSED AS  
25 JURORS.

1 IF YOU HAPPEN TO READ OR HEAR ANYTHING ABOUT THE CASE,  
2 PLEASE LET ME KNOW, AND DISREGARD IT AS SOON AS YOU REALIZE  
3 THAT YOU ARE EXPOSED.

4 THESE RULES ARE HERE TO PROTECT EACH SIDE'S RIGHT TO A  
5 FAIR TRIAL, AND HAVE THIS CASE DECIDED ONLY ON THE EVIDENCE  
6 PRESENTED HERE IN COURT. AS YOU KNOW, WITNESSES HERE TOOK AN  
7 OATH TO TELL THE TRUTH. AND THE ACCURACY OF THEIR TESTIMONY  
8 IS TESTED BY THE TRIAL PROCESS. IF YOU DO ANY RESEARCH OR  
9 INVESTIGATION THAT HAS NOT BEEN TESTED BY THE TRIAL PROCESS,  
10 THEN THE VERDICT COULD BE UNFAIR AND POTENTIALLY RESULT IN A  
11 MISTRIAL.

12 VERDICT FORMS HAVE BEEN PREPARED FOR YOU. I'VE INSTRUCTED  
13 YOU ON THE LAW. YOU MUST FOLLOW MY INSTRUCTIONS AND THE  
14 VERDICT FORMS CAREFULLY. ALL OF YOU MUST DELIBERATE ON AND  
15 AGREE ON EACH QUESTION.

16 WHEN YOU FINISH FILLING OUT THE FORM, THE PRESIDING JUROR  
17 SHOULD WRITE THE DATE AND SIGN IT ON THE ORIGINAL VERDICT FORM  
18 AND NOTIFY THE COURTROOM DEPUTY.

19 AFTER YOUR VERDICT IS READ IN OPEN COURT, YOU MAY BE ASKED  
20 INDIVIDUALLY TO INDICATE WHETHER THE VERDICT EXPRESSES YOUR  
21 OWN PERSONAL VOTE. THIS IS WHAT WE CALL POLLING OF THE JURY  
22 AND IS DONE TO ENSURE THAT ALL JURORS HAVE AGREED TO THE  
23 DECISION.

24 FOR YOUR CONVENIENCE, I HAVE PLACED A COPY OF THE VERDICT  
25 FORM IN YOUR BINDERS. IT IS BLUE. THAT IS FOR YOUR OWN

1 PERSONAL USE TO HELP YOU TRACK. THE ORIGINAL WILL BE PROVIDED  
2 SEPARATELY.

3 IF IT BECOMES NECESSARY DURING YOUR DELIBERATIONS TO  
4 COMMUNICATE WITH ME, YOU MAY SEND A NOTE THROUGH THE COURTROOM  
5 DEPUTY, SIGNED BY ONE OR MORE OF YOU. NO ONE SHOULD EVER  
6 ATTEMPT TO COMMUNICATE WITH ME EXCEPT THROUGH WRITTEN  
7 COMMUNICATIONS. I WILL NOT COMMUNICATE WITH ANY OF YOU ON  
8 ANYTHING CONCERNING THIS CASE EXCEPT IN WRITING OR HERE IN  
9 OPEN COURT.

10 IF YOU SEND OUT A QUESTION, PLEASE KNOW I MUST CONSULT  
11 WITH THE LAWYERS BEFORE ANSWERING IT, WHICH MAY TAKE SOME  
12 TIME. YOU SHOULD CONTINUE YOUR DELIBERATIONS WHILE WAITING  
13 FOR ANY ANSWER TO ANY QUESTION.

14 REMEMBER, YOU ARE NOT TO TELL ANYONE, INCLUDING THE COURT  
15 OR THE COURTROOM DEPUTY, HOW THE JURY STANDS, WHETHER IN TERMS  
16 OF VOTE COUNT OR OTHERWISE WITH RESPECT TO YOUR DELIBERATIONS  
17 UNTIL AFTER YOU HAVE REACHED A UNANIMOUS VERDICT OR YOU HAVE  
18 BEEN DISCHARGED.

19 PLEASE DO NOT LEAVE AT THE END OF THE DAY BEFORE YOU  
20 RECEIVE CLEARANCE FROM ME IN CASE I NEED TO COMMUNICATE WITH  
21 YOU. SO YOU WILL COMMUNICATE WITH US BY NOTE, AND YOU CAN  
22 TELL US IN ADVANCE WHEN YOU ARE PLANNING ON LEAVING.

23 OKAY? ANY QUESTIONS BEFORE I SEND YOU BACK?

24 YES, SIR.

25 **JUROR:** WHEN WE COMMUNICATE IT WILL BE IN WRITING.

1 HOW DO WE -- WHERE DO WE LEAVE THE NOTE?

2 **THE COURT:** YOU ARE GOING TO BE GIVEN LOTS OF NOTE  
3 PAPER FOR COMMUNICATION WITH THE COURT. YOU ARE GOING TO BE  
4 GIVEN ENVELOPES, SPECIAL ENVELOPES TO PUT THOSE NOTES IN.

5 THE COURTROOM DEPUTY WILL EXPLAIN THAT TO YOU AS SOON AS I  
6 SEND YOU BACK. OKAY?

7 OTHER QUESTIONS? YES.

8 **JUROR:** EVIDENCE THAT WAS ENTERED, ARE WE ALLOWED TO  
9 REQUEST IT?

10 **THE COURT:** SO THE EVIDENCE WILL BE SENT IN TO YOU  
11 ONCE I VERIFY WITH THE PARTIES THAT WE HAVE GOT EXACTLY WHAT  
12 WAS ADMITTED. ALL OF THE EVIDENCE WILL BE SENT BACK.

13 SO IT'S PRETTY READY TO GO. IT SHOULDN'T TAKE US VERY  
14 LONG TO GET IT TO YOU. YOUR LUNCHESES ARE BACK THERE. YOU WILL  
15 WANT TO EAT AND ELECT A FOREPERSON.

16 ANYTHING ELSE? OTHER QUESTIONS?

17 **JUROR:** IF WE NEED TO TAKE A BREAK, SAME PROTOCOL?  
18 DO WE NOTIFY --

19 **THE COURT:** YES. THERE WILL BE A COURTROOM SECURITY  
20 OFFICER SITTING OUTSIDE THE JURY ROOM AT THIS POINT. SO WE  
21 SHOULD KNOW EVERYTHING THAT YOU ARE DOING EXCEPT, OF COURSE,  
22 WHAT YOU ARE DELIBERATING ON.

23 ALL RIGHT. OTHER QUESTIONS?

24 ALL RIGHT. OKAY. THANK YOU. WE WILL HEAR BACK FROM YOU  
25 OR WE'LL WAIT FOR YOUR RESPONSE.



1 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

2 **THE COURT:** OKAY. SO A FEW THINGS TO DO.

3 I WOULD APPRECIATE IT IF BOTH SIDES WOULD LODGE THEIR  
4 POWER POINTS WITH ME. IT IS HELPFUL FOR ME TO HAVE THOSE. IF  
5 YOU WILL LODGE A PHYSICAL COPY OR ELECTRONIC COPY OF YOUR  
6 POWER POINTS THAT'S HELPFUL FOR ME. SO IF YOU COULD DO THAT.

7 CELL PHONE NUMBERS, IF YOU WILL WRITE THEM DOWN ON A PIECE  
8 OF PAPER AND HAND THEM TO THE COURTROOM DEPUTY. I NEED YOU TO  
9 BE WITHIN TEN MINUTES OF THE COURTHOUSE.

10 WHERE DO YOU PLAN ON BEING?

11 **MS. NUGENT:** ATTORNEY LOUNGE.

12 **MR. LAFAYETTE:** MY OFFICE IS RIGHT ACROSS THE STREET,  
13 1300.

14 **THE COURT:** OKAY. IS THAT WITHIN TEN MINUTES?

15 **MR. LAFAYETTE:** YES. UNLESS THEY HOLD ME UP  
16 DOWNSTAIRS, YES.

17 **THE COURT:** ALL RIGHT. LET'S SEE. WHO IS GOING TO  
18 STAY HERE AND GO THROUGH THESE EXHIBITS?

19 **MR. LAFAYETTE:** I'LL STAY HERE WITH MR. SU AND WE  
20 WILL GET THE EXHIBITS STRAIGHT.

21 **MS. NUGENT:** WE WILL STAY HERE AS WELL.

22 **THE COURT:** DO I HAVE THE EXHIBIT INDEX? IF I DON'T,  
23 I NEED TO HAVE THAT DELIVERED ASAP.

24 **MS. LYONS:** IT WAS FILED.

25 **THE COURT:** OKAY. WE WILL COMMUNICATE WITH YOU AS WE

1 HEAR FROM THEM. ALL RIGHT. ANY QUESTIONS?

2 MS. NUGENT: NO, YOUR HONOR.

3 THE COURT: MR. LAFAYETTE, ANY QUESTIONS?

4 MR. LAFAYETTE: NO, YOUR HONOR.

5 THE COURT: WE WILL STAND IN RECESS UNTIL WE HEAR  
6 BACK FROM THE JURY. THANK YOU.

7 (PROCEEDINGS RECESSED AT 1:10 P.M.; RESUMED AT 3:30 P.M.)

8 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

9 THE CLERK: REMAIN SEATED. COME TO ORDER. COURT IS  
10 AGAIN IN SESSION.

11 THE COURT: OKAY.

12 DOUG, THIS IS FOR YOU.

13 OKAY. GO ON THE RECORD. THE RECORD WILL REFLECT THE  
14 PARTIES ARE HERE. THE JURY IS NOT.

15 SO IN ANTICIPATION OF THE POSSIBILITY OF INSTRUCTING ON  
16 THE NEXT PHASE, I DO NOW NEED TO KNOW WHAT THE CLAIMS ARE WITH  
17 RESPECT TO THE PLAINTIFF IN TERMS OF THE PUNITIVE INSTRUCTION.  
18 THAT IS, WHO ARE YOU CLAIMING BASED UPON THE EVIDENCE WERE  
19 ARGUABLY MANAGING AGENTS OF THE DEFENDANT?

20 MS. SMALLETS: MIKE BECK, LORI MARTINELLI, AND TOM  
21 RIZZO.

22 THE COURT: WITH RESPECT TO TOM RIZZO, THE -- WHAT IS  
23 THE THEORY?

24 MS. SMALLETS: HE IS THE PLANT MANAGER. HE RATIFIED,  
25 HE APPROVED THE DECISION, AND HE HAD THE INFORMATION THAT TWO

1 OF THE FOUR -- THERE WAS GOING TO BE TWO WOMEN BEING  
2 TERMINATED IN THE -- OF THE NEW HIRE CLASS, AND NOTHING ELSE  
3 HAPPENS AFTERWARD. THERE'S NO INVESTIGATION. SHE GETS FIRED.

4 **THE COURT:** RATIFICATION REQUIRES ACTUAL KNOWLEDGE OF  
5 THE MALICIOUS CONDUCT AND ITS OUTRAGEOUS CHARACTER. WHAT  
6 EVIDENCE EXISTS THAT HE HAD ACTUAL KNOWLEDGE OF THE MALICIOUS  
7 CONDUCT AND ITS OUTRAGEOUS CHARACTER? WHERE IS THE EVIDENCE?

8 **MS. SMALLETS:** IF YOU LOOK AT EXHIBIT 599.

9 **THE COURT:** ALL RIGHT. LET ME GET IT.

10 WHAT ELSE?

11 **MS. SMALLETS:** THAT'S IT FOR TOM RIZZO.

12 AND THERE'S LORI MARTINELLI'S TESTIMONY THAT SHE TALKED  
13 WITH HIM AS WELL. I'M SORRY.

14 **THE COURT:** I NEED -- DOUG, COULD YOU ASK STEPHANIE  
15 TO BRING ME BINDERS? I NEED 599.

16 WHILE I'M GETTING IT, WHAT EVIDENCE EXISTS -- OKAY. 599 IS  
17 AN EMAIL FROM CHRISTINE LAYNE TO LORI MARTINELLI. MR. RIZZO  
18 IS NOT ON THIS EMAIL, CORRECT?

19 **MS. SMALLETS:** YES.

20 **THE COURT:** THAT IS CORRECT?

21 **MS. SMALLETS:** THAT IS CORRECT.

22 **THE COURT:** AND WHERE IN THIS EMAIL DOES IT TALK  
23 ABOUT THE OUTRAGEOUS -- FIRST OF ALL, SO 599, HOW DOES THAT  
24 SUPPORT ANYTHING WITH RESPECT TO TOM RIZZO?

25 **MS. SMALLETS:** WELL, THE -- YOU HAVE LORI

1 MARTINELLI'S -- IT'S THE SAME, THAT SHE SPOKE WITH TOM.

2 **THE COURT:** ABOUT WHAT?

3 **MS. SMALLETS:** THE TERMINATION PROCEEDING WITH THE  
4 TERMINATION.

5 **THE COURT:** SO WHERE IS THE OUTRAGEOUS CONDUCT?

6 **MS. SMALLETS:** SO --

7 **THE COURT:** THERE'S A TERMINATION AND THERE'S THE  
8 STUFF UPON -- THERE IS THE SPECIFIC EVIDENCE WHICH GIVES RISE  
9 POTENTIALLY TO PUNITIVES.

10 I NEED TO KNOW WHERE IS THERE EVIDENCE THAT THEY HAD  
11 ACTUAL KNOWLEDGE NOT OF JUST THE TERMINATION, BUT OF THE  
12 ACTUAL MALICIOUS AND OUTRAGEOUS CONDUCT.

13 **MS. SMALLETS:** YOU HAVE CHRISTINE LAYNE TELLS LORI  
14 MARTINELLI, GIVEN THIS MAY RESULT IN THE TERMINATION OF TWO  
15 FEMALES OF OUR HIRING CLASS, OUT OF FOUR FEMALES TOTAL AND  
16 WITH LIKELY NO MALE TERMINATIONS.

17 SO THEY ARE BEING NOTIFIED THAT THERE'S THE ISSUE AND THEY  
18 DON'T HAVE TO HAVE -- MALICE DOES NOT REQUIRE THE ACTUAL  
19 INTENT TO HARM. THEY HAVE TO BE AWARE THE CONSEQUENCES COULD  
20 ARISE AND WILLFULLY DISREGARD THEM.

21 **THE COURT:** I NEED EVIDENCE OF OUTRAGEOUS CONDUCT,  
22 ACTUAL KNOWLEDGE OF OUTRAGEOUS CONDUCT. A TERMINATION IN AND  
23 OF ITSELF IS INSUFFICIENT.

24 **MS. SMALLETS:** YES, BUT THE TERMINATION IS NOT  
25 SUFFICIENT. BUT FOR LORI MARTINELLI, UNDER THE *PFEIFER* -- I'M

1 PROBABLY SAYING THAT WRONG, P-F-E-I-F-E-R *VERSUS JOHN CRANE*  
2 *INC.* 2013, 220 CAL. APP. FOURTH 1270.

3 **THE COURT:** I NEED -- OKAY. SO THERE IS A CASE THAT  
4 SAYS, I'M SURE, SOMETHING.

5 **MS. SMALLETS:** YES.

6 **THE COURT:** I NEED A LINK.

7 SO AS I UNDERSTAND IT, MR. RIZZO HAD KNOWLEDGE THAT THERE  
8 WAS GOING TO BE A TERMINATION OF WOMEN WHO WERE A MINORITY IN  
9 A CLASS.

10 I HAVE INFORMATION THAT THE ITEMS, THE SPECIFIC ITEMS WITH  
11 RESPECT TO THE TERMINATION THAT ARE IDENTIFIED IN EXHIBIT 599  
12 WERE COMMUNICATED FROM CHRISTINE LAYNE TO LORI MARTINELLI.

13 WHAT I DON'T HAVE AND WHAT I AM LOOKING FOR IS INFORMATION  
14 SHOWING THAT MR. RIZZO AND MS. MARTINELLI HAD INFORMATION  
15 REGARDING THE STICKER AND REGARDING JEFF FISCHER'S CONDUCT.

16 **MS. SMALLETS:** SO I DON'T BELIEVE --

17 **THE COURT:** WHERE IS THAT?

18 **MS. SMALLETS:** I DON'T BELIEVE THERE IS EVIDENCE THAT  
19 LORI MARTINELLI SPECIFICALLY HAD THAT INFORMATION.

20 **THE COURT:** WELL THEN HOW DO YOU GET ACTUAL  
21 KNOWLEDGE?

22 **MS. SMALLETS:** SO IT'S A RATIFICATION AND ITS' --  
23 THAT THE MALICE DOES NOT REQUIRE THE ACTUAL INTENT TO HARM.  
24 SO --

25 **THE COURT:** THAT -- I DON'T DISAGREE WITH THAT.

1 PEOPLE CAN BE NOT WANTING TO HARM AND STILL ACT OUTRAGEOUSLY.  
2 WE STILL NEED TO HAVE ACTUAL KNOWLEDGE OF THE MALICIOUS  
3 CONDUCT.

4 **MS. SMALLETS:** IT'S THE -- THEY ARE AWARE OF THE  
5 ISSUE AND IT IS A FAILURE TO ADDRESS IT.

6 **THE COURT:** WHERE DOES IT SHOW THAT THOSE TWO  
7 INDIVIDUALS WERE AWARE OF THE STICKER?

8 **MS. SMALLETS:** THERE IS NO EVIDENCE THAT THEY WERE  
9 SPECIFICALLY AWARE OF THE STICKER.

10 **THE COURT:** WHERE IS THE EVIDENCE THAT THEY WERE  
11 AWARE OF FISCHER'S CONDUCT?

12 **MS. SMALLETS:** THERE IS NO EVIDENCE OF THAT.

13 **THE COURT:** WHERE IS THERE EVIDENCE THAT THEY WERE  
14 AWARE OF ANYTHING OTHER THAN THE RECOMMENDED TERMINATION BASED  
15 UPON WHAT'S IN 599?

16 **MS. SMALLETS:** THE... 599 IS WHAT THEY ARE AWARE OF.

17 **THE COURT:** MY RECOLLECTION OF THE TESTIMONY IS THAT  
18 THEY ARE AWARE OF NOTHING OTHER THAN WHAT'S IN 599.

19 **MS. SMALLETS:** I BELIEVE THAT TO BE CORRECT, YOUR  
20 HONOR.

21 **THE COURT:** I'M GOING TO GO READ THIS CLOSELY. I  
22 DON'T THINK IT IS SUFFICIENT. AND I DON'T -- I THINK THAT THE  
23 DEFENDANTS ON THAT TOPIC ARE ENTITLED TO JUDGMENT. BUT I'M  
24 WILLING TO LISTEN TO ARGUMENT.

25 **MS. SMALLETS:** WELL, YOUR HONOR, MIKE BECK IS IN A

1 DIFFERENT CATEGORY.

2 **THE COURT:** I AGREE. RIGHT NOW THE ONLY PERSON I  
3 THINK THAT COULD BE IN THIS INSTRUCTION IS MIKE BECK.

4 **MS. SMALLETS:** OKAY. THANK YOU, YOUR HONOR.

5 **THE COURT:** DO YOU WANT TO ARGUE ANYTHING MORE ABOUT  
6 TOM RIZZO OR LORI MARTINELLI?

7 **MS. SMALLETS:** NO, YOUR HONOR.

8 **THE COURT:** MR. LAFAYETTE?

9 **MR. LAFAYETTE:** YES, YOUR HONOR.

10 MIKE BECK HAD RESPONSIBILITY FOR OPCEN, AND THAT'S IT. IN  
11 A REFINERY OF 700 EMPLOYEES, ALL HE HAD WAS ABOUT 60. AND  
12 SO --

13 **THE COURT:** SOMETIMES THAT'S AN ENTIRE COMPANY. IT  
14 IS AN ENTIRE DIVISION.

15 **MR. LAFAYETTE:** YES, YOUR HONOR.

16 **THE COURT:** AND THERE IS LAW TO THE EFFECT THAT WHEN  
17 YOU HAVE THE ABILITY TO AFFECT POLICIES WITHIN A DIVISION,  
18 THAT CAN BE SUFFICIENT.

19 AND MIKE BECK -- I MEAN THERE WAS EVIDENCE HERE THAT, YOU  
20 KNOW, WHAT GOES ON SOMEWHERE ELSE DOESN'T MATTER, IT DOESN'T  
21 HAPPEN IN OPCEN, OR IT DOES HAPPEN IN OPCEN; THAT UNIT OF 60  
22 INDIVIDUALS WHICH CAN BE IN MANY WAYS LARGER THAN MANY  
23 COMPANIES, OPERATED UNDER THE LEADERSHIP AND CONTROL OF MIKE  
24 BECK.

25 NOW, I CAN TELL YOU RIGHT NOW, AND I'M GOING TO LET YOU

1 FINISH YOUR ARGUMENT, BUT I'M INCLINED TO LET IT GO. THIS IS  
2 A VERY CLEAN ISSUE. IF THIS EVER GETS UP TO THE COURT OF  
3 APPEAL THEY CAN TELL ME I'M WRONG. THEY WILL HAVE A NICE BIT  
4 OF EVIDENCE, AND I'M CERTAINLY NOT GOING TO, AFTER ALL OF  
5 THIS, NOT GET SOME INDICATION FROM THE JURY AS TO WHETHER OR  
6 NOT THEY THINK IT WAS SUFFICIENT.

7 GO AHEAD.

8 **MR. LAFAYETTE:** DIRECT THE COURT'S ATTENTION TO *MUNIZ*  
9 *VERSUS UNITED PARCEL SERVICE* 231 F. SUPP. 2D, 961 NORTHERN  
10 DISTRICT OF CALIFORNIA, 2010, FINDING NO PROBATIVE EVIDENCE  
11 THAT A UPS OPERATION MANAGER WAS A MANAGING AGENT BECAUSE HE  
12 WAS IN CHARGE OF SIX DIVISIONS, 23 PACKAGE CENTERS, AND  
13 APPROXIMATELY 40 MANAGERS, 150 SUPERVISORS, AND 4,200  
14 EMPLOYEES BECAUSE HE HAD NO DISCRETION TO DETERMINE CORPORATE  
15 POLICY AS OPPOSED TO LOCAL POLICY.

16 AND THAT'S WHAT WE ARE TALKING ABOUT. THERE IS A  
17 DIFFERENCE BETWEEN SOME DISCRETION ON A LOCAL LEVEL. THERE  
18 ISN'T A MANAGER ANY PLACE IN THE WORLD THAT DOESN'T HAVE TO  
19 HAVE SOME AUTHORITY WITH REGARD TO SOME LOCAL MATTERS.

20 BUT HAVING CORPORATE POLICY IS THE TOUCHSTONE. AND THERE  
21 IS NO EVIDENCE IN THIS RECORD THAT THIS MAN WHO HAD BEST HAD  
22 60 PEOPLE IN A 700-PERSON REFINERY, WHICH WAS PART OF ITSELF A  
23 MUCH LARGER INSTITUTION COULD DO --

24 **THE COURT:** SO EVERYBODY KEEPS TELLING ME. THERE'S  
25 NO ONE WHO SAID ANYTHING, YES OR NO. THERE IS NO ONE WHO HAS



1 COME IN HERE WHO HAS TOLD ME ANYTHING OTHER THAN THAT REFINERY  
2 EMPLOYEES ABOUT 700 PEOPLE.

3 I HAVE NO EVIDENCE ONE WAY OR THE OTHER ABOUT THE  
4 CORPORATE STRUCTURE BEYOND THE 700 PEOPLE AND OPCEN OPERATES  
5 INDIVIDUALLY.

6 **MR. LAFAYETTE:** THERE IS MORE, AND I WOULD SAY THIS:  
7 THERE'S TESTIMONY THAT THERE ARE OTHER REFINERIES AS PART OF  
8 EQUILON. THERE'S TESTIMONY THAT HE HAD NO AUTHORITY OUTSIDE  
9 OF HIS DEPARTMENT, LET ALONE THE OTHER REFINERIES. AND THERE  
10 IS NO TESTIMONY HERE THAT HE COULD DO ANYTHING TO EFFECTUATE  
11 CORPORATE POLICY OR POLICY BEYOND HIS DEPARTMENT.

12 BUT I THINK REGARDLESS OF WHAT WE SAY ABOUT EQUILON, WHAT  
13 WE DO KNOW IS IT'S BIGGER THAN JUST THE MARTINEZ REFINERY. WE  
14 KNOW THAT FROM THE TESTIMONY IN THIS CASE. WE KNOW THAT HE  
15 COULD SAY OR DO NOTHING WITH REGARD TO THOSE. WE KNOW THAT HE  
16 COULD DO NOTHING WITH REGARD TO THE OTHER DEPARTMENTS.

17 AND WITH THAT KNOWLEDGE OF KNOWING THAT, THAT'S WHERE IT  
18 COMES DOWN TO IF HE CAN'T DO ANYTHING OUTSIDE OF HIS  
19 DEPARTMENT, OUTSIDE OF THE REFINERY THAT HE WORKS IN, AND  
20 EVERY TIME HE MOVES OR STEPS, BECAUSE THIS IS THE OTHER  
21 TESTIMONY, HE CAN'T FIRE PEOPLE WITHOUT TALKING TO PEOPLE, HE  
22 CAN'T HIRE PEOPLE WITHOUT TALKING TO PEOPLE. WHEN YOU ROLL  
23 ALL OF THAT UP, HOW COULD THERE EVER BE A FINDING THAT THIS  
24 MAN WHO AT BEST HAS THESE PEOPLE COULD MAKE POLICY DECISIONS  
25 FOR THE CORPORATION AS A WHOLE?

1           THAT'S THE ISSUE THAT I THINK WE ARE CONFRONTED WITH. AND  
2           THAT'S WHERE I LOOK TO THIS CASE THAT I BROUGHT TO THE COURT'S  
3           ATTENTION, THIS *MUNIZ VERSUS, UNITED PARCEL SERVICE INC.* CASE  
4           BECAUSE I THINK THAT GIVES US SOME CONTEXT FOR WHAT WE ARE  
5           TALKING ABOUT.

6           BECAUSE IN THAT CASE WE'RE LOOKING AT SOMEBODY WHO HAD 150  
7           SUPERVISORS UNDER HIM, 40 MANAGERS AND 4,200 EMPLOYEES SPREAD  
8           OUT OVER SIX DIVISIONS AND 23 PACKAGE CENTERS. IF THAT IS A  
9           PERSON WHO DOESN'T, HOW CAN A PERSON AT THIS LEVEL HAVE THAT?

10           **THE COURT:** ALL RIGHT. RESPONSE.

11           **MS. SMALLETS:** YOUR HONOR, I WOULD LIKE TO DIRECT THE  
12           COURT'S ATTENTION TO *WHITE VERSUS ULTRAMAR*, WHICH IS A  
13           CALIFORNIA SUPREME COURT CASE, 21 CAL. FOURTH 563, 1999, IN  
14           WHICH THE CALIFORNIA SUPREME COURT HELD THAT THE MANAGER IN  
15           THAT CASE WAS A MID-LEVEL MANAGER WAS A MANAGING AGENT BECAUSE  
16           THAT MANAGER HAD RESPONSIBILITY FOR A DISTINCT SUBUNIT OF THE  
17           COMPANY, 65 EMPLOYEES.

18           AND THERE WAS NO EVIDENCE THAT MANAGER WROTE FORMAL  
19           POLICIES. THAT MANAGER WAS CONTROLLING THAT SUBUNIT AND MADE  
20           POLICIES ON... YES, SORRY, NO EVIDENCE THAT MADE FORMAL  
21           POLICIES.

22           AND FOR MIKE BECK WE HAVE EVIDENCE THAT HE WAS RESPONSIBLE  
23           FOR ALL OF THE OPERATIONS OF THE OPCEN DEPARTMENT, HE WAS  
24           RESPONSIBLE FOR ALL OF THE UNITS WITHIN THE DEPARTMENT, ALL OF  
25           THE EMPLOYEES, ALL OF THE PROJECTS. HE WAS RESPONSIBLE FOR

1 THE TURNAROUNDS. HE TESTIFIED HE HAD THE AUTHORITY TO HIRE  
2 AND FIRE WITH UPPER LEVEL APPROVAL, BUT IT WAS HIS DECISION.  
3 AND HE SAID THAT WHEN IT CAME TO OPCEN, THE BUCK STOPS WITH  
4 HIM. HE TESTIFIED VERY CLEARLY HE IS RESPONSIBLE FOR THAT  
5 DISTINCT SUBUNIT OF THE REFINERY, AND THAT'S SUFFICIENT UNDER  
6 THE LAW. HE DOES NOT HAVE TO BE RESPONSIBLE FOR THE ENTIRE  
7 COMPANY.

8 **THE COURT:** ANYTHING ELSE?

9 **MS. SMALLETS:** NO, YOUR HONOR.

10 **MR. LAFAYETTE:** I WOULD SIMPLY SAY, YOUR HONOR, TO  
11 SAY THAT THE BUCK STOPS WITH HIM IN OPCEN IS IN NO WAY SAYING  
12 THAT HE HAS POLICY -- THAT HE CAN SET CORPORATE POLICY FOR  
13 THIS ENTITY AS A WHOLE. AND TO SAY THAT THE BUCK STOPS WITH  
14 HIM DOESN'T REALLY GET US ANYWHERE.

15 **THE COURT:** HOW DO YOU DISTINGUISH *WHITE VERSUS*  
16 *ULTRAMAR*?

17 **MR. LAFAYETTE:** *WHITE VERSUS ULTRAMAR* IS THE FIRST  
18 CASE THAT THE STATE SUPREME COURT APPLIES. WHAT WE SHOULD BE  
19 LOOKING AT IS NOT THE INITIAL HOLDING OF THE SUPREME COURT,  
20 BUT I THINK WE SHOULD BE LOOKING AT THE CASE WHICH I DIRECTED  
21 THE COURT'S ATTENTION TO WHICH IS THE *MUNIZ* CASE. BECAUSE  
22 *WHITE VERSUS ULTRAMAR* IS 1999. I'M REFERRING THE CASE (SIC)  
23 TO A 2010 OPINION WHICH IS USING *WHITE* AND APPLYING IT TO A  
24 PARTICULAR FACT PATTERN.

25 AND WHEN PLAINTIFF SAYS WHAT SHE IS SAYING ABOUT *WHITE*

1        *VERSUS ULTRAMAR*, THE EVIDENCE THERE IS NOT THE SAME AS THE  
2        EVIDENCE THAT WE'RE LOOKING AT HERE.  AND I THINK PLAINTIFF  
3        PAINTS WITH TOO BROAD OF A BRUSH TO THE EXTENT THAT SHE  
4        SUGGESTS OTHERWISE, WHICH IS WHY I THINK THE *MUNIZ* CASE IS THE  
5        ONE THAT IS ACTUALLY MORE ON POINT.  BECAUSE NOW THERE'S A  
6        QUESTION OF HOW YOU APPLY THIS STANDARD FOR PURPOSES OF  
7        CORPORATE POLICY MAKING.

8            AND THAT'S WHERE I THINK THE REAL ISSUE BECOMES.  AND THAT  
9        CASE, THAT PERSON HAD THE ABILITY TO SET CORPORATE POLICY  
10       REGARDLESS OF THE POSITION.  THAT'S NOT THE FACT PATTERN WE  
11       HAVE HERE.

12           IT'S FACT DRIVEN AND THERE ARE NO FACTS HERE WHERE THIS  
13       PERSON, MR. BECK, SET CORPORATE POLICY.  ALL HE DID WAS MANAGE  
14       HIS DEPARTMENT.

15           IF WE START DEVIATING HERE, THEN WHAT WE REALLY START  
16       DOING IS SAYING THAT EVERY PERSON WHO IS A SUPERVISOR NOW  
17       BECOMES A MANAGING AGENT, AND THAT WOULD MEAN THAT THERE WOULD  
18       BE NO END.  IT WOULD JUST MEAN THAT THE PERSON WHO MANAGES A  
19       CREW OF JANITORS IN A BUILDING IS NOW THE MANAGING AGENT.

20           THAT'S THE STANDARD THAT PLAINTIFF IS PUSHING FOR AND  
21       THAT'S NOT THE LAW.  THE LAW HAS A VERY HIGH BURDEN AND A VERY  
22       HIGH STANDARD.  AND IT SAYS CORPORATE POLICY MAKING.  AND  
23       THAT'S NOT WHAT WE HAVE HERE.  AND WE CAN'T JUST OBLITERATE  
24       THAT BECAUSE I THINK WHAT THE COURT WAS TRYING TO DO WAS TO  
25       FIND SOMEONE WHO WAS AT THE LEVEL OF AN OFFICER OR A DIRECTOR

1 OF SOMETHING. AND SAY --

2 **THE COURT:** THEY COULD HAVE LEFT IT AT OFFICER OR  
3 DIRECTOR, COULDN'T THEY HAVE?

4 **MR. LAFAYETTE:** THEY COULD HAVE AND THEY DIDN'T.  
5 THEY SAID THERE MIGHT BE INSTANCES WHERE SOMEONE HAS CORPORATE  
6 POLICY-MAKING DECISION. AND THEY SAID, OKAY, FINE. IF THAT'S  
7 THE CASE, THEN THAT'S WHERE WE ARE.

8 AND WHEN YOU LOOK AT THAT, THIS MAN DOESN'T COME CLOSE TO  
9 THAT. AND ALL HE HAS IS A DEPARTMENT OF 60 PEOPLE. THAT'S  
10 THE ISSUE THAT WE HAVE.

11 **THE COURT:** WHY DOESN'T *MUNIZ* CONTROL?

12 **MR. LAFAYETTE:** I AM SORRY, YOUR HONOR?

13 **THE COURT:** I'M NOT TALKING TO YOU. WHY DOESN'T  
14 *MUNIZ* CONTROL?

15 **MS. SMALLETS:** WELL, YOUR HONOR, I BELIEVE *WHITE*  
16 *VERSUS ULTRAMAR*, THE CALIFORNIA SUPREME COURT CASE WOULD  
17 CONTROL RELATIVE TO A DISTRICT COURT CASE ON A MATTER OF  
18 CALIFORNIA STATE LAW.

19 **THE COURT:** WELL, THERE IS NOTHING IN THAT CASE --  
20 THERE IS NOTHING IN *MUNIZ* THAT SAYS THAT *WHITE VERSUS ULTRAMAR*  
21 WAS WRONG.

22 **MS. SMALLETS:** RIGHT. AND I DO THINK --

23 **THE COURT:** WHAT CORPORATE POLICY WAS MR. BECK ABLE  
24 TO CONTROL OR DIRECT? THESE ARE FACTUAL ISSUES.

25 **MS. SMALLETS:** I DO BELIEVE --

1           **THE COURT:**   WHAT IS YOUR BEST FACTUAL CASE?

2           **MS. SMALLETS:**   I BELIEVE THE FACTS OF OUR CASE ARE  
3   QUITE STRIKINGLY SIMILAR TO *WHITE VERSUS ULTRAMAR* CASE.   I DO  
4   THINK THE BEST FACTS ARE THE ONES I TOLD YOU:   HE TESTIFIED  
5   HE'S RESPONSIBLE FOR THAT UNIT.   HE'S THE MANAGER.   HE'S IN  
6   CHARGE, AND THAT GAVE HIM THE -- HE HAD THE DECISION-MAKING  
7   AUTHORITY AND HE'S THE ONE WHO MADE THE DECISION HERE.

8           AND THERE IS NO REQUIREMENT, AGAIN, HE BE AN OFFICER OR  
9   DIRECTOR, HE HAS TO BE A MANAGING AGENT.   THERE IS NO  
10   REQUIREMENT HE MAKE FORMAL CORPORATE POLICY.

11          **THE COURT:**   WELL, IT SAYS THAT THEY HAVE TO DETERMINE  
12   ULTIMATE -- HE HAS TO HAVE SUBSTANTIAL INDEPENDENT AUTHORITY  
13   AND JUDGMENT IN THEIR CORPORATE DECISION MAKING SO THAT THEIR  
14   DECISIONS ULTIMATELY DETERMINE CORPORATE POLICY.

15          SO, YES, IT SAYS THAT THEIR DECISIONS HAVE TO ULTIMATELY  
16   DETERMINE CORPORATE POLICY.   SO WHAT CORPORATE POLICY DO HIS  
17   DECISIONS ULTIMATELY MAKE?

18          **MS. SMALLETS:**   I DON'T THINK THERE'S ANY REQUIREMENT  
19   THAT DETERMINE CORPORATE POLICY BEYOND THE AREA OF HIS  
20   RESPONSIBILITY.   THERE WAS NO EVIDENCE OF THAT IN THE *WHITE*  
21   CASE.   THERE WAS -- SOMEONE HAD A VERY SIMILAR LEVEL.   IT'S  
22   THE AUTHORITY OF THE PORTION OF THE CORPORATION THAT THEY ARE  
23   RESPONSIBLE FOR.

24          **THE COURT:**   ALL RIGHT.   ANYTHING ELSE FOR ME TO THINK  
25   ABOUT?

1           **MS. SMALLETS:** NO, YOUR HONOR.

2           **MR. LAFAYETTE:** NO, YOUR HONOR.

3           **THE COURT:** OKAY.

4           LET ME, I GUESS THERE WAS -- I HAD GIVEN MY QUICK  
5           SPREADSHEET I JUST WANT TO MAKE SURE THAT... MY UNDERSTANDING  
6           IS THAT EVERYBODY SAT DOWN AND AGREED WHICH EXHIBITS WERE TO  
7           GO INTO THE JURY ROOM, CORRECT?

8           **MR. LAFAYETTE:** YES, YOUR HONOR.

9           **MS. SMALLETS:** YES, YOUR HONOR.

10          **THE COURT:** LET ME DOUBLE CHECK SOMETHING.

11                               (PAUSE IN THE PROCEEDINGS.)

12          **THE COURT:** SO WAS 65 FROM METCALF, DID YOU ALL SHOW  
13          THAT?

14          **MS. NUGENT:** YES, WE DID, YOUR HONOR.

15          **THE COURT:** AND 207 AS WELL?

16          **MS. NUGENT:** THAT WAS RAY JONES'S DRAWING OF THE  
17          DRAEGER TUBE.

18          **THE COURT:** OKAY. ALL RIGHT.

19                I AGREE 521 WAS NOT ADMITTED. AND, CORRECT, 550 WAS NOT.  
20                576 WAS NOT.

21                DOUG, DO YOU WANT TO GO GET THE ENVELOPE, PLEASE?

22                OKAY. SO I HAD 596 ADMITTED. YOU ALL SHOWED IT WAS NOT?

23          **MR. LAFAYETTE:** WHICH ONE, YOUR HONOR? I AM SORRY.

24          **THE COURT:** 596.

25          **MR. LAFAYETTE:** I SHOW IT AS ADMITTED.

1           **MS. NUGENT:**   WAS THERE A 596A?

2           **THE COURT:**   THERE IS 596A.   I SHOW IT AS ADMITTED.

3           **MS. SMALLETS:**   I BELIEVE THAT WE SHOW 596A ADMITTED,  
4           NOT 596.

5           **MR. LAFAYETTE:**   I THINK IT WAS 596A, YOUR HONOR.  
6           THERE WAS A BUNCH OF FOLDERS ATTACHED TO IT BUT I THINK YOU  
7           CUT OFF THE FOLDERS.

8           **THE COURT:**   DID YOU SEND IN 596A?

9           **MR. LAFAYETTE:**   YES.

10          **MS. NUGENT:**   YES.

11          **THE COURT:**   YOU DID.   OKAY.

12          **MS. NUGENT:**   TO THE JURY, YES.

13          **THE COURT:**   ALL RIGHT.   THEY ARE WRITING DOWN THEIR  
14          NOTE.

15          HOW IS YOUR KNEE, MR. LAFAYETTE?

16          **MR. LAFAYETTE:**   IT'S BETTER BUT I CAN'T WAIT UNTIL  
17          LATER THIS WEEK AND I CAN GO TALK TO THE SURGEON.

18          **THE COURT:**   WE CAN GO OFF THE RECORD.   HIS KNEE  
19          DOESN'T HAVE TO BE ON THE APPELLATE RECORD.

20                               (PAUSE IN THE PROCEEDINGS.)

21          **THE COURT:**   OKAY.   DOUG, TELL THEM IT'S OKAY.   THAT'S  
22          FINE.   THEY WOULD LIKE TO ADJOURN FOR THE DAY AND RESUME AT  
23          8:30 TOMORROW MORNING.   YOU CAN TELL THEM THEY ARE EXCUSED.

24          ALL RIGHT.   SO I'M GOING TO LET THEM GO AND THEY WILL BE  
25          BACK HERE TOMORROW AT 8:30.   SO YOU'RE INSTRUCTED TO RETURN AT



1 8:30 OR BE AVAILABLE WITHIN TEN MINUTES OF 8:30.

2 **MS. SMALLETS:** THANK YOU.

3 **MR. LAFAYETTE:** THANK YOU.

4 **THE COURT:** WE ARE ADJOURNED.

5 WHY DON'T YOU GIVE THEM A FEW MINUTES TO GET TO THE  
6 ELEVATORS.

7 **MR. LAFAYETTE:** OKAY. I DON'T WANT TO RUN INTO THEM.

8  
9 (PROCEEDINGS ADJOURNED AT 3:58 P.M.)

10  
11  
12 **CERTIFICATE OF REPORTER**

13 I, DIANE E. SKILLMAN, OFFICIAL REPORTER FOR THE  
14 UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY  
15 CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE  
16 RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

17  
18 

19 DIANE E. SKILLMAN, CSR 4909, RPR, FCRR

20 MONDAY, DECEMBER 17, 2018  
21  
22  
23  
24  
25